

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 494

THE UNITED STATES OF AMERICA, PETITIONER

vs.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR.,
AS EXECUTORS OF THE ESTATE OF MARY M.
RYERSON

No. 495

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR.,
AS EXECUTORS OF THE ESTATE OF MARY M. RYER-
SON, PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED OCTOBER 9, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

JOSEPH T. RYERSON AND EDWARD L. RYERSON,
JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON,
Plaintiffs-Appellees,

7133

vs.

THE UNITED STATES OF AMERICA,
Defendant-Appellant.

JOSEPH T. RYERSON AND EDWARD L. RYERSON,
JR., AS EXECUTORS OF THE ESTATE OF MARY M. RYERSON,
Plaintiffs-Appellants,

7134

vs.

THE UNITED STATES OF AMERICA,
Defendant-Appellee.

*Counsel for Joseph T. Ryerson and Edward L.
Ryerson, Jr., as Executors:*

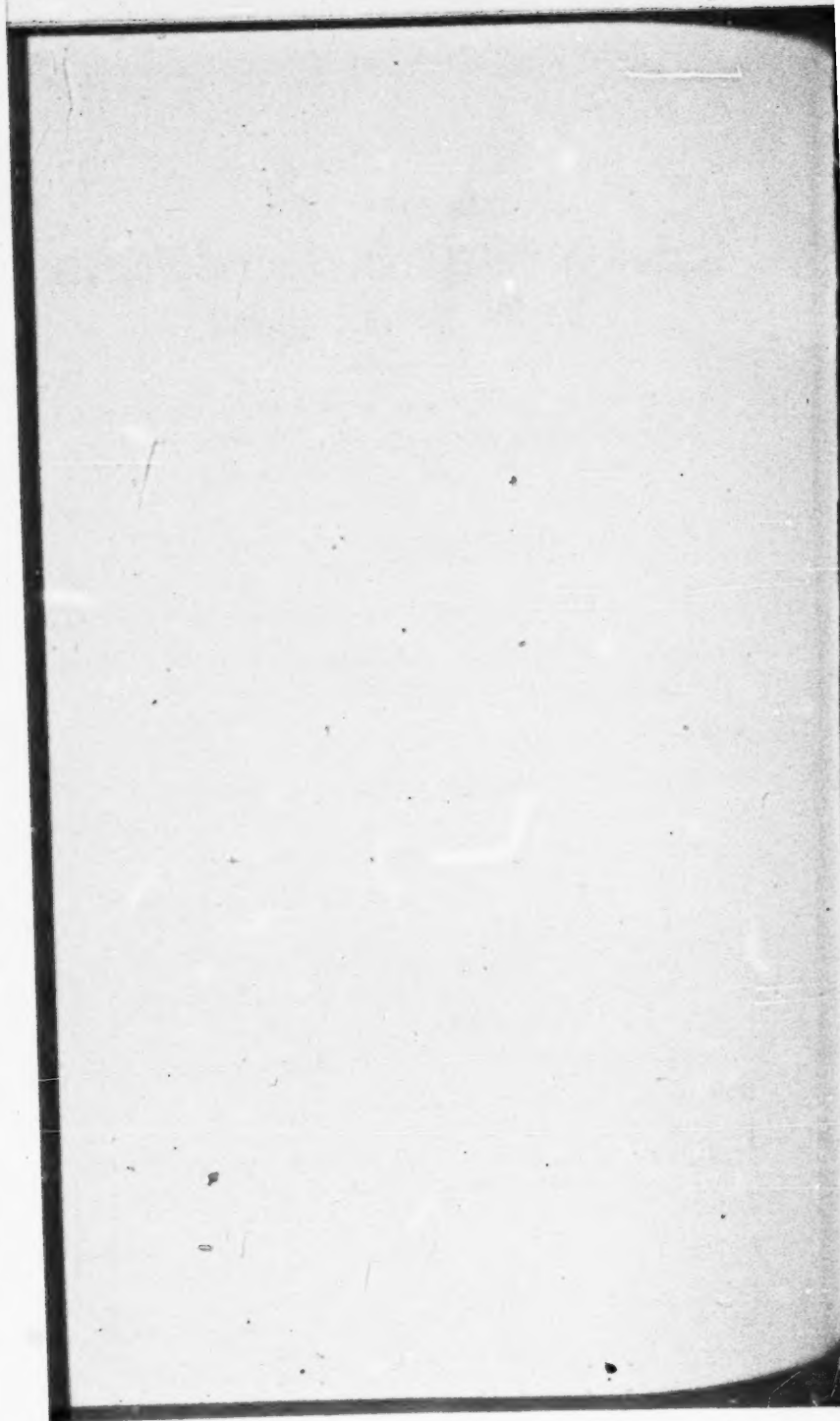
MR. WILLIAM N. HADDAD.

Counsel for The United States of America:

MR. SAMUEL O. CLARK, JR.,

MR. WILLIAM J. CAMPBELL.

Appeals from the District Court of the United States for
the Northern District of Illinois, Eastern Division.



INDEX.

Placita	1
Complaint	2
Exhibit A—Trust Agreement for the benefit of Mrs. Mary Ryerson Frost and Others, dated Oct. 31, 1933	7
Exhibit B—Trust Agreement between Mary Mitchell Ryerson and Joseph T. Ryerson and Edward L. Ryerson, as Trustees, dated Nov. 15, 1934	14
Exhibit C—Claim for refund (1934).....	21
Exhibit D—Claim for refund (1935).....	25
Exhibit E—Letter, Dec. 10, 1936, Commissioner to Mrs. Mary M. Ryerson.....	31
Exhibit F—Letter, Aug. 13, 1936, Commissioner to Mrs. Mary M. Ryerson.....	32
Affidavit of James P. Johnson.....	35
Answer	35
Stipulation of Facts	38
Exhibit One—The Travelers Insurance Co. Policy No. 82A-NW-50 issued to Mary M. Ryerson, dated (effective) Feb. 27, 1928.....	41
Exhibit Two—The Travelers Insurance Co. Pol- icy No. 110A-NW-50, issued to Mary M. Ry- erson, dated (effective) Jan. 5, 1929.....	51
Opinion by Sullivan, J., filed Mar. 31, 1939.....	61
Opinion by Sullivan, J., filed June 29, 1939.....	67
Findings of fact and conclusions of law, filed June 29, 1939	71
Judgment, entered June 29, 1939.....	76
Notice of appeal by plaintiff, filed Sept. 29, 1939.....	77
Bond on appeal of plaintiff.....	78


Statement of points upon which plaintiff-appellant intends to rely	79
Notice of appeal by defendant, filed Sept. 29, 1939....	80
Order of Nov. 7, 1939, that original Exhibits 1 and 2 attached to stipulation of facts be transmitted to U. S. Circuit Court of Appeals in lieu of copies thereof	81
Notice of filing plaintiff-appellant's designation of record	82
Plaintiff-appellant's designation of record.....	83
Defendant-appellee's designation of record.....	84
Certificate of Clerk	84

PAPERS FILED AND PROCEEDINGS HAD IN U. S. CIRCUIT COURT OF APPEALS.

Stipulation that cost of printing record be apportioned equally between the parties.....	85
Orders of Dec. 20, 1939, substituting Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson as parties to appeals in place and stead of Mary M. Ryerson, deceased	87
Clerk's certificate.....	88
Opinion, Treanor, J.....	90
Opinion, Lindley, J., dissenting in part.....	96
Judgment, Cause No. 7133.....	97
Judgment, Cause No. 7134.....	98
Clerk's certificate.....	98
Orders allowing certiorari.....	100

1 Pleas in the District Court of the United States Placita.
for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Philip L. Sullivan, District Judge of the United States for the Northern District of Illinois on Twenty-Ninth day of June, in the year of our Lord one thousand nine hundred and Thirty-Nine, being one of the days of the regular June Term of said Court, begun Monday, the Fifth day of June, and of our Independence the 163rd year.

Present:

Honorable Philip L. Sullivan, District Judge. 
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

Filed 2
11,
1935.

IN THE DISTRICT COURT OF THE UNITED STATES,
Northern District of Illinois,
Eastern Division.

Mary M. Ryerson
vs.
United States of America. } No. 47078.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Twelfth day of April, A. D. 1938.

3 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—47078) • •

COMPLAINT.

Mary M. Ryerson, by Bell, Boyd & Marshall, her attorneys, presents this, her petition or complaint against the United States of America, pursuant to the provisions of Section 24 (20) of the Judicial Code as amended (28 U. S. C. A. 41 (20)), and for cause of action alleges as follows:

1. Plaintiff, Mary M. Ryerson, resides at 1075 E. Ringwood Road in Lake Forest in the County of Lake and State of Illinois.

2. This is a suit for the recovery of federal gift taxes erroneously and illegally assessed against the plaintiff for the years 1934 and 1935 in the amounts of \$1,569.44 and \$2,065.00, respectively, plus interest.

3. On or about September 16, 1935, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a gift tax return for the calendar year 1934, pursuant to the Gift Tax Act of 1932, as amended, reporting gifts of \$161,965.00, exclusions of \$20,000.00, deductions of \$50,000.00, net gifts of \$91,965.00 and a tax of \$3,223.25. The plaintiff paid this tax on that date to the said Collector of Internal Revenue, together with interest in the amount of \$96.70.

4 4. On or about March 5, 1936, plaintiff filed with said Collector of Internal Revenue a gift tax return for the calendar year 1935, reporting gifts, other than charitable, of \$392,000.00, charitable gifts of \$4,000.00, exclusions of \$10,000.00, net gifts of \$382,000.00, net gifts for the preceding year of \$91,965.00, total net gifts of \$473,965.00, and a tax of \$44,082.37. The plaintiff paid this tax to the said Collector of Internal Revenue on that date.

5. Plaintiff, in the years 1934 and 1935 and years prior thereto, made no other gifts subject to tax under the Gift Tax Act of 1932, as amended.

6. The Commissioner of Internal Revenue, upon examination of the said return for the year 1934, increased the total gifts to \$171,426.00, reduced the exclusions to \$15,000.00, and increased the net gifts to \$106,426.00. This resulted in the assessment of an additional tax for the year 1934, of \$819.44. The plaintiff paid this additional tax, together with interest of \$76.24 (or a total of \$895.68), to the said Collector of Internal Revenue at Chicago, Illinois, on November 11, 1936.

7. The Commissioner of Internal Revenue, upon examination of the said return for the year 1935, increased the net gifts for 1934 to \$106,426.00, and the total net gifts for 1934 and 1935 to \$488,426.00, and, on that basis, assessed an additional tax for 1935 of \$940.00. The plaintiff paid this additional tax, together with interest of \$31.06 (or a total of \$971.06), to the said Collector on November 11, 1936.

8. The gifts made by the plaintiff in the year 1934 consisted of the assignment of four insurance policies issued by the Travelers Insurance Company.

5 The numbers of these policies, together with the dates of assignment and their values upon those respective dates, are as follows:

	Value
Policy No. 82A-NW-50 assigned December 18, 1934, to Joseph T. Ryerson	\$ 40,696.50
Policy No. 82B-NW-50 assigned December 18, 1934, to Edward L. Ryerson	40,696.50
Policy No. 110A-NW-50 assigned December 26, 1934, to Donald McKay Frost and Mary Ryerson Frost, Trustees under Trust Agreement dated October 31, 1933, a true copy of which Trust Agreement is hereto attached as "Exhibit A" and is made a part of this Complaint	40,286.00

Policy No. 110B-NW-50 Assigned December 26, 1934, to Joseph T. Ryerson and Edward L. Ryerson, Trustees under Trust Agreement dated November 15, 1934, a true copy of which Trust Agreement is hereto attached as "Exhibit B" and is made a part of this Complaint.

	40,286.00.
The total value of these policies was	\$161,965.00.

9. The Commissioner of Internal Revenue, upon examining the said return for the year 1934, erroneously increased the values of the above mentioned policies to a total amount of \$171,426.00.

10. The Trust Agreement of October 31, 1933, to the trustees under which insurance policy No. 110B-NW-50 was assigned, as above stated, provides that one-fourth of the income of the trust shall be paid to Mary Ryerson Frost (daughter of the plaintiff) for life, and that the balance shall be added to principal. The Agreement further provides that the Trustees shall pay over the principal to Mary Ryerson Frost and her husband,

6 Donald McKay Frost, on their joint request. Both Mary Ryerson Frost and Donald McKay Frost have present vested interests in the trust: they are, in substance, the absolute owners of the property. Accordingly, \$5,000.00 for each of them should be excluded from the gift to this trust, pursuant to Section 504 (b) of the Gift Tax Act of 1932, as amended. The Commissioner allowed an exclusion of \$5,000.00 on account of the gift to Mary Ryerson Frost, but he erroneously refused to allow a similar exclusion on account of the gift to Donald McKay Frost.

11. Under the Trust Agreement of November 15, 1934, to the trustees under which policy No. 110B-NW-50 was assigned, as above stated, the proceeds of the insurance constituting the corpus of the trust are to be held for the benefit of Isabelle McGenniss Ryerson and her two children, Joan Ryerson and Anthony Ryerson, and their descendants. The income from one-third of the trust property is to be paid to Isabelle McGenniss Ryerson for her life, and afterward the principal of this one-third is to be paid to the heirs of Donald M. Ryerson. The other two-thirds of the principal are to be paid to Joan Ryerson and Anthony Ryerson, subject to a provision postponing possession and giving them only the income until they reach the ages of 26 and 30, respectively. Under

these provisions, the following persons have present vested interests:

Isabelle McGenniss Ryerson (present life estate as to one-third).

Joan Ryerson (one-third of principal).

Anthony Ryerson (one-third of principal).

7 Isabelle McGenniss Ryerson was 44 years of age on the date of the gift, and the value of her life interest in one-third of the policy was more than \$5,000.00. The interests given to Joan Ryerson and Anthony Ryerson also had a value of more than \$5,000.00 each. Accordingly, \$5,000.00 for each of the said beneficiaries (or a total of \$15,000.00) should be excluded from the gift to this trust, pursuant to Section 504 (b) of the Gift

Tax Act of 1932, as amended. The Commissioner, however, refused to allow any amount to be excluded.

12. The plaintiff's gift tax for the year 1934 is correctly computed as follows:

Total gifts	\$161,965.00
Less exclusions on account of gifts to:	
Joseph T. Ryerson	\$ 5,000.00
Edward L. Ryerson, Jr.	5,000.00
Frost Trust dated October 31, 1933	10,000.00
Ryerson Trust dated November 15, 1934	15,000.00
	<hr/> 35,000.00
	\$126,965.00
Exemption	50,000.00
	<hr/>
Net gifts	\$ 76,965.00
Correct tax	\$ 2,473.25
Interest from March 15, 1935 to September 16, 1935	\$ 74.20

The difference of \$1,569.44 between the correct tax and the tax actually paid, plus the difference of \$22.50 between the interest upon the correct tax and the interest actually paid on September 16, 1935, and plus \$76.24 paid as interest on November 11, 1936, should be refunded to the taxpayer, together with interest.

13. The plaintiff's net gifts for the year 1934 were, as above shown, \$76,965.00, and her net gifts for the year 1935, \$382,000.00. The total gifts for the two years 8 were therefore \$458,965.00, and the correct tax for the year 1935 was therefore \$42,957.37. (There is

Complaint.

no controversy about the value of the gifts made in 1935.) The difference of \$2,065.00 between this amount and the tax actually paid, plus \$31.06 paid as interest on November 11, 1936, should be refunded to the taxpayer, together with interest.

14. On November 16, 1936, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of \$1,569.44, plus interest, of the gift tax paid by her for the year 1934. A true copy of the said claim and of the statement attached thereto is hereto attached, marked "Exhibit C" and is made a part of this Complaint.

15. On November 16, 1936, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of \$2,065.00, plus interest, of the gift tax paid by her for the year 1935. A true copy of the said claim and of the statement attached thereto is attached hereto, marked "Exhibit D" and is made a part of this Complaint.

16. Both of the said claims for refund were duly forwarded to the Commissioner of Internal Revenue and were considered by the Commissioner on the merits and were eventually disallowed or rejected. The notice of disallowance or rejection on both claims was mailed to the taxpayer by registered mail, as required by Section 1403 (a) of the Revenue Act of 1932, on December 10,

1936. A true copy of the said notice is hereto attached, marked "Exhibit E". A true copy of the Bureau letter of August 13, 1936, which is referred to in the said notice, is hereto attached, marked "Exhibit F".

Wherefore, plaintiff prays that a judgment may be entered herein in favor of the plaintiff and against the defendant for \$3,764.24, plus interest as follows:

From September 16, 1935—

On overpayment for 1934	\$750.00	
On interest paid on overpayment	22.50	\$ 772.50

From March 5, 1936—

On overpayment for 1935		1,125.00
-------------------------	--	----------

From November 11, 1936—

On deficiency payment for 1934	\$819.44	
On interest paid on such payment	76.24	
On deficiency payment for 1935	940.00	
On interest on such payment	31.06	1,866.74

at 6% per annum, together with costs of suit, and for such other and further relief as to the court may seem proper.

Mary M. Ryerson,
Plaintiff.

Bell, Boyd & Marshall,
Wm. N. Haddad,
Attorneys for Plaintiff,
135 South La Salle Street,
Chicago, Illinois.

State of Illinois }
County of Cook } ss.

Mary M. Ryerson, being first duly sworn, on oath deposes and says that she is the plaintiff named in the foregoing Complaint subscribed by her, that she has read the said Complaint, and that the statements contained therein are true.

Mary M. Ryerson.

Subscribed and sworn to before me this 11th day of April, 1938.

Harry E. Arthars,
Notary Public.

(Seal)

11

"EXHIBIT A."

Indenture of Trust
for the benefit of

Mrs. Mary Ryerson Frost and Others.

This Indenture made this thirty-first day of October, Nineteen Hundred and Thirty-Three, between Donald McKay Frost, of Boston, Massachusetts (hereinafter referred to as the "Grantor"), party of the first part, and Donald McKay Frost and his wife Mrs. Mary Ryerson Frost, both of Boston, Massachusetts (hereinafter referred to as the "Trustee"), parties of the second part,

Witnesseth

That in consideration of the Trustee agreeing to undertake the duties of Trustee as hereinafter provided and of other valuable considerations, the Grantor hereby gives, grants, bargains, sells and conveys to the Trustee certain properties heretofore belonging outright to the Grantor which are listed in a statement which refers to this Indenture of Trust and which has been signed by the Trustee, but in trust nevertheless to hold and manage the same, to collect the income arising therefrom and after paying the expenses of administering the trust, to deal with and distribute the net income and principal all in the manner hereinafter provided.

1. The Trustee shall accumulate the net income received during each calendar year and on the last day of the year shall pay to Mrs. Mary Ryerson Frost, the wife of Donald McKay Frost, during her life and while she is of sound mind, one-fourth ($\frac{1}{4}$) of such accumulated net income and upon the death or mental incapacity of the said Mrs. Mary Ryerson Frost, shall pay said one-fourth ($\frac{1}{4}$) of such accumulated net income in equal shares to Mary Ryerson Frost, Second, and Mary Jane McKay Frost, the daughters of Donald McKay Frost and Mrs. Ryerson Frost, during their respective lives. In case of the death of either of the said daughters before 12 the termination of this trust, the half share of the said one-fourth ($\frac{1}{4}$) of such accumulated net income to which such deceased daughter would otherwise have been entitled shall be distributed among the issue of such deceased daughter in equal shares per stirpes and not per capita, but in case such deceased daughter shall die without leaving issue, or if such deceased daughter shall die leaving issue but all of such issue shall die before the termination of this trust, the whole one-fourth ($\frac{1}{4}$) of such accumulated net income shall be paid to the surviving daughter during her lifetime. The remaining three-fourths ($\frac{3}{4}$) of such accumulated net income shall be transferred to and paid into the principal of the trust and the amount so paid into the principal of the trust shall then become and shall thereafter be dealt with as part of the principal of the trust.

2. The Trustee at any time or from time to time upon receipt of a request or requests in writing signed by Donald McKay Frost and Mrs. Mary Ryerson Frost while

both are living and are of sound mind and in case of the death or mental incapacity of either of them, by the survivor or other of them and by either of their two daughters Mary Ryerson Frost, Second, and Mary Jane McKay Frost then living and of sound mind, or in case neither of said daughters is living or of sound mind, then upon the sole request of Mrs. Mary Ryerson Frost, being of sound mind, shall distribute and pay over the principal of the trust fund in whole or in part and in equal or unequal shares to or for the benefit of Donald McKay Frost, Mrs. Mary Ryerson Frost and their daughters Mary Ryerson Frost, Second, and Mary Jane McKay Frost and their issue, or any one or more of them, all as shall be specified in said written request or requests.

3. After the death or mental incapacity of both 13 Donald McKay Frost and Mrs. Mary Ryerson Frost, the Trustee shall at any time or from time to time upon receipt of a written request or requests signed by their daughters Mary Ryerson Frost, Second, and Mary Jane McKay Frost, or by such one of them as shall then be alive and of sound mind and of full age, pay over and apply the principal of the trust fund, in whole or in part as shall be specified in said written request or requests, but in two equal shares, for the benefit of the said daughters, whether or not then of age or of sound mind, and of their issue, in the manner hereinafter provided. All such payments of principal made for the benefit of Mary Ryerson Frost, Second, and of Mary Jane McKay Frost during their respective lives shall be paid to the Trustees of certain trusts made for their benefit respectively by Mrs. Mary Ryerson Frost, as grantor, and dated December 5th, 1920, to be held and administered as a part of the principal of such trust or trusts as the same may be amended, or if either of said daughters be not then alive, such deceased daughter's share shall be paid out as if at the time of her death it had been part of the principal of the said trust made for her benefit as the same may be amended.

4. Unless sooner terminated through the distribution of the entire trust principal as hereinbefore provided, this trust shall terminate upon the death of the survivor of Mrs. Mary Ryerson Frost and her children Mary Ryerson Frost, Second, and Mary Jane McKay Frost, all of whom are now alive, and upon such termination the trust fund then remaining shall be divided into two equal

shares and one of such shares shall be paid out as if at the time of her death it had been part of the principal of the trust made for the benefit of Mary Ryerson Frost, Second, and dated December 5th, 1930, as the same may be amended, and the other of such shares shall be paid out as if at the time of her death it had been part 14 of the principal of the trust made for the benefit of Mary Jane McKay Frost and dated December 5th, 1930, as the same may be amended.

5. This trust may be altered or amended at any time or from time to time by an instrument or instruments in writing delivered to the Trustee and signed by the following parties:—

(a) During the joint lives of Donald McKay Frost and Mrs. Mary Ryerson Frost and so long as they shall both be of sound mind, by an instrument or instruments in writing signed by both of them.

(b) After the death or mental incapacity of Donald McKay Frost by an instrument or instruments in writing signed by Mrs. Mary Ryerson Frost, if she is of sound mind.

(c) After the death or mental incapacity of Mrs. Mary Ryerson Frost by an instrument or instruments in writing signed by Donald McKay Frost, if he is of sound mind, and by either one of his daughters, Mary Ryerson Frost, Second, or Mary Jane McKay Frost, then of age and of sound mind.

(d) No alteration or amendment of this instrument may be made after the death or mental incapacity of both Donald McKay Frost and Mrs. Mary Ryerson Frost.

6. After Donald McKay Frost shall cease to be Trustee hereunder, there shall be always three persons acting as Trustees of this trust, but pending the filling of any vacancy, the Trustee or Trustees in office shall be vested with all powers conferred hereunder upon the Trustee. Trustees successor to Donald McKay Frost and Mrs. Mary Ryerson Frost may be appointed by an instrument in writing executed by Donald McKay Frost and Mrs. Mary Ryerson Frost, while they are of sound mind, or in case of the death or mental incapacity of either of them by the survivor or other of them and such appointments 15 shall take effect at the time or upon the event specified in such instrument; and they or the survivor or other of them from time to time by an instrument in writing may revoke any such appointment and make new appointments. In case of a vacancy occurring in the

office of Trustee which has not been provided for as aforesaid, the surviving, remaining or other Trustee or Trustees may appoint by an instrument in writing a successor Trustee to fill such vacancy, but subject to the approval in writing of Mrs. Mary Ryerson Frost and Donald McKay Frost so long as they shall be alive and of sound mind and upon the death or mental incapacity of either of them by the survivor or other of them. After the death or mental incapacity of both Mrs. Mary Ryerson Frost and Donald McKay Frost, vacancies in the office of Trustee hereunder may be filled by an instrument in writing signed by the surviving, remaining or other Trustee or Trustees, but subject to the approval in writing of Mary Ryerson Frost, Second, and of Mary Jane McKay Frost, so long as they shall be alive and of sound mind and upon the death or mental incapacity of either of them, by the survivor or other of them. If at any time there should be no person occupying the office of Trustee hereunder and if there should be no effective provision hereunder for the appointment of a successor Trustee or Trustees, then all persons who at that time are entitled to receive any share of the trust income, and who are of age and of sound mind, may by an instrument in writing signed by all of them appoint successor Trustees.

7. No person at any time entitled under this instrument to receive capital or income shall have power to alienate or anticipate any payment thereof nor shall any such capital or income be subject to the control of any husband of any beneficiary hereunder or to be taken for the satisfaction of the claims of any creditor or representative of creditors of any such beneficiary.

8. The Trustee shall have the following powers in addition to and not in limitation of his common law and statutory powers:—

(a) He shall not be required to give any surety or sureties on his official bonds and he shall collect the income, rents and profits on the property held in trust and after deducting the expenses and charges of administering the trust and fair compensation on income received shall make the payments herein specified to the parties entitled thereto from time to time on their personal receipt independent of the control of any husband or creditor.

(b) He may from time to time mortgage or lease both real and personal property in the trust fund with or without option to purchase and although for a term extending

beyond the termination of the trust, and may sell the said property in whole or in part at public or private sale without approval of any court and without liability upon any person dealing with the Trustee to see to the application of any money or other property delivered to him; exchange property for other property; invest and reinvest in securities or properties although of a kind or in an amount which ordinarily would not be considered suitable for a trust investment; keep any or all securities or other property in the name of some other person or corporation or in his own name without disclosing his fiduciary capacity; determine what shall be charged or credited to income and what to principal notwithstanding any determination by the courts and specifically but without limitation make such determination in regard to stock and

17 cash dividends, rights and all other receipts in respect of the ownership of stock; purchase or retain stocks which pay dividends in whole or in part otherwise than in cash and in his discretion treat such dividends in whole or in part as income; participate in such manner as he deems proper in any reorganization, merger or consolidation affecting any of the trust property; determine who are the distributees hereunder and the proportions in which they shall take, make payments of principal and of income direct to and otherwise deal with minors hereunder as though they were of full age; make distributions or divisions of principal hereunder in property in kind at values determined by him; pay, compromise or contest any claim or other matter directly or indirectly affecting the trust fund; employ counsel for any of the above or other purposes and determine whether or not to act upon his advice; and receive property from any person by ~~will or otherwise~~ to be added to the trust fund and to be held, ~~administered and accounted for~~ as a part thereof. All divisions and decisions made by the Trustee in good faith shall be conclusive on all parties in interest.

(c) He shall have full power and authority from time to time in his discretion without order or license of any court to allot such securities or other property or such shares in securities or other property of the trust fund in satisfaction of the whole or part of any distributive share hereunder as in his uncontrolled discretion he shall deem fair.

(d) No Trustee shall be liable for the acts or omissions of any other Trustee and each Trustee shall be liable only for his own acts or omissions when done in bad faith.

18 A Trustee may leave the trust property in the possession and control of a co-Trustee.

(e) During the lives of Mary Ryerson Frost and Donald McKay Frost and of the survivor of them and while they or either of them shall be of sound mind, the Trustee shall not dispose of any shares in the stock of the corporation of Joseph T. Ryerson & Son, Inc., an Illinois corporation, which may at any time form part of the principal of the trust fund, except with the approval in writing of Mary Ryerson Frost and Donald McKay Frost, while both are living and of sound mind, and after the death or mental incapacity of either of them with the approval in writing of the survivor or other of them. If the Trustee at any time has requested such approval and it has been refused, the Trustee thereafter shall not be responsible for any consequences resulting from such refusal.

9. Any Trustee may resign by an instrument in writing, without intervention of any court, if a co-Trustee or co-Trustees remain in office or if the resignation is to take effect upon the appointment and acceptance of a successor Trustee. Any individual co-Trustee may from time to time by written power of attorney delegate any powers to one or more of his co-Trustees, with or without power of substituting another co-Trustee, for a period not exceeding six months, and may successively renew any such delegation by like powers of attorney. Any Trustee may be authorized in writing by the other Trustee or Trustees to sign checks on a bank account and to manage the ordinary business of the trust. While a Trustee is sick or absent from the United States, the other Trustee or Trustees may, for a period of six months, exercise the powers of all of the Trustees. The written instruments embodying resignations, appointments, revocations of appointments and acceptances of Trustees hereunder

19 ~~and alterations or amendments of this Indenture shall~~
be kept annexed to the executed copy of this Indenture in the Trustee's hands. Any person dealing with the Trustee may rely on a copy of this Indenture and of any instrument annexed hereto, certified by a Trustee, to the same extent that he might rely on the original. Any Trustee succeeding to office hereunder shall ipso facto upon acceptance of the trust become vested with title to the trust property, with all the powers conferred hereunder upon the Trustee, without the necessity of other instruments. In this Indenture and in alterations and

amendments thereof, wherever the context permits, references to the Trustee mean the one or more Trustees for the time being in office.

10. The provisions of this Indenture shall be construed pursuant to the laws of the Commonwealth of Massachusetts.

In Witness Whereof, we have hereunto set our hands and seals on the day and year first above written.

(signed) Donald McKay Frost, (Seal)

(signed) Donald McKay Frost, (Seal)

(signed) Mrs. Mary Ryerson Frost. (Seal)

In the presence of:

(signed) Mabel V. Brooks,

(signed) Mildred B. Farrar.

Commonwealth of Massachusetts.

Suffolk, ss.

October 31, 1933.

Then personally appeared the above-named Donald McKay Frost and acknowledged the foregoing instrument to be his free act and deed.

Before me—

(signed) Robert P. Lyle,
Notary Public.

(Notarial Seal)

This Indenture, made this 15th day of November, 1934, by and between Mary Mitchell Ryerson, of Lake Forest, Illinois, hereinafter sometimes termed the Grantor, party of the first part, and Joseph T. Ryerson and Edward L. Ryerson, of Chicago, Illinois, as Trustees, hereinafter sometimes termed the Trustees, parties of the second part,

Witnesseth:

The Grantor has assigned, transferred, set over, and delivered to the parties of the second part and to their successors in said trust the insurance upon her life described in Schedule A attached hereto, together with all her right, title, and interest therein and all of the rights, options, and privileges thereunder, which insurance and the avails thereof are to be held and distributed as hereinafter set forth, To Have And To Hold unto the said parties of the second part and their successors in said

trust, in trust for the purposes, upon the trusts, and subject to the terms, covenants, conditions, and provisions hereinafter set forth.

Article I.

The Trustees shall collect all sums which may be due upon said insurance, with power to bring suit upon, compromise or submit to arbitration any claim upon or in relation thereto, and their receipt shall constitute a full quittance to the insurer, which shall not be bound to see to the application of any sums paid. The Trustees may also, for any reason which they deem sufficient, exercise any option or privilege granted by any policy of insurance included in the Trust Estate, and may receive any payments, dividends or other money payments due thereon, and may receive paid-up insurance or the cash surrender value thereof. The Trustees shall not be liable to any beneficiary hereunder for any action taken by them pursuant to this Article I or for any failure to act, or for any loss occasioned thereby, or for any mistake in judgment or otherwise, except for their own intentional breach of good faith.

Article II.

Upon the death of the Grantor, the Trustees shall hold and disburse the proceeds and avails of such insurance for the benefit of Isabelle McGenniss Ryerson, widow of the Grantor's son, Donald Mitchell Ryerson, and for the benefit of Joan Ryerson and Anthony Ryerson, children of Isabelle McGenniss Ryerson and Donald Mitchell Ryerson, and the descendants of said children, as follows:

1. If Isabelle McGenniss Ryerson shall survive the Grantor, the Trustees shall divide the Trust Estate into two portions, one portion comprising two-thirds in value of the Trust Estate, and the other portion one-third in value thereof. The Trustees shall pay the net income of the one of said portions comprising one-third in value of the Trust Estate in convenient installments to Isabelle McGenniss Ryerson during her life. Upon the death of Isabelle McGenniss Ryerson, the Trustees shall pay, deliver, and convey the principal of the fund theretofore held for the benefit of Isabelle McGenniss Ryerson, with all unexpended accumulations thereon, to those persons who would be the heirs at law of Donald Mitchell

Ryerson had he died upon the date of and immediately following the death of Isabelle McGenniss Ryerson.

2. The Trustees shall pay, deliver, and convey the other portion of the Trust Estate comprising two-thirds in value thereof, or all said Trust Estate if Isabelle McGenniss Ryerson shall not survive the Grantor, to the descendants of the Grantor's son, Donald Mitchell Ryerson, who shall survive the Grantor.

3. If no descendants of the Grantor's son, Donald Mitchell Ryerson, shall survive the Grantor, the Trustees shall pay over, deliver, and convey said portion comprising two-thirds in value of the Trust Estate, or all said Trust Estate if Isabelle McGenniss Ryerson shall not survive the Grantor, to the heirs at law of the Grantor.

4. While any person entitled under the foregoing provisions hereof to any part of the principal of the Trust Estate shall be under the age of twenty-six (26) years, the Trustees shall hold such part of the principal and manage it for the benefit of such person until such person shall have attained the age of twenty-six (26) years; at that time the Trustees shall pay over, deliver, and convey to such person one-third in value of that part of the principal of the Trust Estate theretofore held for the benefit of such person; the remaining two-thirds in value of that part of the principal of the Trust Estate shall be held and managed by the Trustees for the benefit of such person until he or she shall have attained the age of thirty (30) years, and at that time the Trustees shall
23 pay, deliver, and convey to such person said remaining two-thirds in value of that part of the principal of the Trust Estate theretofore held for the benefit of such person, together with all unexpended accumulations thereon.

5. While and so long as any part of the principal of the Trust Estate shall, under the foregoing provisions, be held for any person under the age of twenty-six (26) years, the Trustees shall use and apply all or such part as to them shall seem best of the net income of that part of the principal of the Trust Estate held for the benefit of such person for or toward the maintenance or education of such person, and the Trustees may either so use and apply the same themselves or, in their discretion, pay the same or any part thereof to the guardian or parent of such person without any responsibility for the application thereof by such guardian or parent. Any part of such

net income not used or applied as aforesaid shall be accumulated and added to the principal held for such person.

6. While and so long as any part of the principal of the Trust Estate shall, under the foregoing provisions, be held for the benefit of any person who is over the age of twenty-six (26) years, the Trustees shall pay the entire net income thereof to the person for whose benefit such part of the principal of the Trust Estate is held in convenient installments, and in any event as often as once each year.

7. Wherever any gift is made herein to the heirs or descendants of any person, it shall be construed as a gift to such heirs or descendants share and share alike, per stirpes and not per capita, and whenever any of 24 such heirs or descendants shall have living descendants the parent shall take the entire share to the exclusion of his or her descendants.

8. No income or principal payable or property distributable by the Trustees under the provisions hereof shall be in any manner whatsoever pledged, assigned, transferred, sold, anticipated, charged, or encumbered by any beneficiary hereunder, either by voluntary or involuntary act or by operation of law.

Article III.

1. The Trustees shall have power, discretion, and authority: to invest and reinvest the Trust Estate in such property as to them, in their entire discretion, shall seem wise, including stocks, bonds, notes secured and unsecured, interests or shares in trust, and other personal property, with as wide latitude of investment as an individual would have if the absolute owner thereof and without being restricted to investments for trustees as authorized by any statute or rule of law; to sell, exchange, or dispose of any investments for cash or wholly or partly on credit for such prices and on such terms as they shall see fit; to deposit any stock or securities with or under the direction of any committee or other agency formed to protect such stock or securities, and to consent to any reorganization, consolidation or merger, and to pay any expenses or assessments in connection therewith; to exercise or dispose of or reject preemptive or other rights to subscribe to stock or securities; to place and keep stock,

25 securities, or other property in the custody of any de-
positary, and in the name of the Trustees or their
nominees, with or without disclosing any fiduciary
relationship; to employ, upon such terms as they may
approve, any servants, agents, investment counsel, and
attorneys, at law or in fact (including one of the Trus-
tees), in connection with the management of the Trust
Estate, and to delegate discretionary authority to one of
their own number or to any other person in respect of
how the capital stock of any corporation shall be voted;
to pay, settle, and compromise all demands of or against
the Trustees or the Trust Estate; to purchase investments
from or sell them to other trusts and decedents' estates,
even though one or more of the Trustees herein shall be
trustees or beneficiaries of such other trusts, or executors
or administrators or beneficiaries of such estates; to loan
the funds of the Trust Estate to any person, partnership,
or corporation, including trustees, executors, or adminis-
trators, with or without security; to borrow such sums
of money as they may deem expedient and to secure
repayment thereof by mortgage, pledge, or hypothecation
of any property of the Trust Estate. No Trustee shall
be responsible for any default of any other person or for
any loss sustained by the Trust Estate in any manner
other than through his own breach of good faith. No
person paying money or delivering any property to the
Trustees shall be required to see to the application thereof.

2. The full interest on any bonds or other obligations
for the payment of money shall be reckoned as income
even though they may have been purchased at a premium;
and upon the maturity or sale or reinvestment thereof
respectively any loss or gain realized shall fall upon
26 or inure to the principal. All dividends on shares
of a corporation forming part of the principal of
the Trust Estate which are payable in the shares of the
corporation shall be deemed principal. The proceeds of
the sale of rights to subscribe for additional stock or
securities shall be deemed principal. All dividends on
shares of a corporation which are payable otherwise than
in the shares of the corporation itself shall be deemed
income. Where the Trustees shall have the option of
receiving a dividend either in cash or in the shares of
the declaring corporation, it shall be considered as a cash
dividend and deemed income, irrespective of the choice
made by the Trustees. All ordinary and extraordinary
cash dividends shall be deemed wholly income notwith-

standing the fact that such cash dividend represents, either wholly or in part, a distribution of assets of the corporation other than surplus earnings; provided only that upon final liquidation of a corporation amounts paid on account of such liquidation shall be deemed principal, and the Trustees are authorized, in their discretion, to determine what amounts are so paid in final liquidation.

3. If any estate, inheritance or other succession taxes or duties or transfer charges shall be assessed in connection with any gift herein made they shall be paid by the Trustees out of the principal of the Trust Estate.

Article IV.

1. The trustees hereinabove named are authorized at any time to appoint additional and successor trustees by an instrument in writing signed by the then Trustees or Trustee hereunder showing such additional or successor trustee or trustees, and any trustee appointed as aforesaid shall, upon his or its acceptance of said trust, have all the rights, powers, authority, discretion, duties, and obligations (including the right to appoint additional or successor trustees) hereby conferred upon or intrusted to the Trustees originally named. Upon the death, resignation, or other contingency rendering all the survivor or remaining Trustees appointed either hereunder or by the Trustees as aforesaid unable to perform the duties of said trusteeship, The Northern Trust Company, a corporation of Illinois, is appointed as sole Trustee hereunder.

2. During the continuance of the trusts created and provided for hereby, a majority of the Trustees shall have all the powers, authority, and discretion conferred upon or intrusted to the whole number. Neither of the Trustees named herein shall be required to give a bond as Trustee; and they shall receive no compensation for their services as such Trustee. Any successor in trust may receive and retain reasonable compensation for all services rendered.

Article V.

The Trustees may receive from the Grantor or others additional property to be held by them upon the trusts herein specified as part of the Trust Estate, or as part of any fund created hereunder.

Article VI.

This trust may be altered, amended or revoked at any time during the lifetime of the Grantor by an instrument in writing signed by the Grantor and consented to in writing by Isabelle McGenniss Ryerson, if living, and either Joan Ryerson or Anthony Ryerson, and delivered to the Trustees, who shall thereupon endorse upon such instrument over their signatures a certificate stating the date upon which the same was delivered to them.

In Witness Whereof the party of the first part has hereunto set her hand and seal, and the parties of the second part, to evidence their acceptance of the trusts herein declared and to acknowledge receipt of the property listed in Schedule A below, have hereunto set their hands and seals the day and year first above written.

Mary M. Ryerson (Seal)

Joseph T. Ryerson (Seal)

Edward L. Ryerson (Seal)

As Trustees.

Schedule A.

Insurance of Travelers Insurance Company of Hartford upon the life of Mary Mitchell Ryerson represented by Policy Number 110 NW50.

29

"EXHIBIT C."

30 Form 843
Treasury Department
Internal Revenue Service
Revised June 1930

Claim.

To Be Filed With the Collector Where Assessment Was
Made or Tax Paid.

The Collector will indicate in the block below the kind
of claim filed, and fill in the certificate on the reverse side.

- ☐ Refund of Tax Illegally Col-
lected.
- ☐ Refund of Amount Paid for
Stamps Unused, or Used in
Error or Excess.
- ☐ Abatement of Tax Assessed
(not applicable to estate or
income taxes).

Collector's Stamp
(Date received)

State of Illinois, }
County of Cook. } ss.

Type or Print

Name of taxpayer or
purchaser of stamps Mary M. Ryerson
Business address 135 South LaSalle Street Chicago Ill.
(Street) (City) (State)
Residence Lake Forest, Illinois.

The deponent, being duly sworn according to law, de-
poses and says that this statement is made on behalf of
the taxpayer named, and that the facts given below are
true and complete:

1. District in which return (if any) was filed First Illi-
nois.
2. Period (if for income tax, make separate form for
each taxable year) from January 1, 1934, to December 31,
1934.
3. Character of assessment or tax Gift tax.
4. Amount of assessment, \$4042.69; dates of payment
September 16, 1935 and November 11, 1935.

5. Date stamps were purchased from the Government

6. Amount to be refunded \$1569.44, plus interest.

7. Amount to be abated (not applicable to income or estate taxes) \$_____

8. The time within which this claim may be legally filed expires, under Section 528 of the Revenue Act of 1932, on November 11, 1939.

The deponent verily believes that this claim should be allowed for the reasons set forth in the statement hereto attached.

(Attach letter-size sheets if space is not sufficient.)

Signed Mary M. Ryerson.

Sworn to and subscribed before me this 14th day of November, 1936.

Harry E. Arthurs

(Signature of officer administering oath)

(Seal)

Notary Public.

(Title)

(See Instructions on Reverse Side)

31 Statement attached to Claim for Refund of Gift Taxes—Year 1934.

The undersigned claimant filed a gift tax return for the year 1934 showing total gifts of \$161,965, exclusions of \$20,000 and net gifts of \$91,965; and paid tax thereon of \$3,223.25 on September 16, 1935. On examining the said return, the Commissioner increased the total gifts to \$171,426, reduced the exclusions to \$15,000, and increased the net gifts to \$106,426. This resulted in the assessment of an additional tax of \$819.44. The claimant paid this additional tax, together with interest (or a total of \$895.68), on November 11, 1936.

The gifts made by the claimant in the year 1934 consisted of four insurance policies issued by the Travelers Insurance Company and assigned as follows:

Policy No. 82A-NW-50 assigned December 18, 1934, to Joseph T. Ryerson.

Policy No. 82B-NW-50 assigned December 18, 1934, to Edward L. Ryerson.

Policy No. 110A-NW-50 assigned December 26, 1934, to Donald McKay Frost and Mary Ryerson Frost, Trustees under Trust Agreement dated October 31, 1933.

Policy No. 110B-NW-50 assigned December 26, 1934, to Joseph T. Ryerson and Edward L. Ryerson, Trustees under Trust Agreement dated November 15, 1934.

The values of these policies on the dates of the respective gifts were as follows:

32	Policy No. 82A-NW-50	\$40,696.50
	Policy No. 82B-NW-50	40,696.50
	Policy No. 110A-NW-50	40,286.00
	Policy No. 110B-NW-50	40,286.00
Total:		<u>\$161,965.00</u>

In examining the return, the Commissioner erroneously increased these values to a total of \$171,426.00.

The trust agreement of October 31, 1933, above mentioned, provides that one-fourth of the income of the trust shall be paid to Mary Ryerson Frost (daughter of this claimant) for life, and that the balance shall be added to principal. The agreement further provides that the trustees shall pay over the principal to Mary Ryerson Frost and her husband, Donald McKay Frost, upon their joint request. Both Mary Ryerson Frost and her husband have present vested interests in the trust: they are, in substance, the absolute owners of the property. Accordingly, \$5,000 for each of them should be excluded from the gift to this trust. The Commissioner allowed a deduction of \$5,000 on account of the gift to Mary Ryerson Frost, but he refused to allow a similar deduction on account of the gift to her husband.

Under the trust agreement of November 15, 1934, above mentioned, the proceeds of the insurance are to be held for the benefit of Isabelle McGenniss Ryerson and her two children, Joan Ryerson and Anthony Ryerson, and 33 their descendants. The income from one-third of the trust property is to be paid to Isabelle McGenniss Ryerson for her life, and afterwards this one-third is to go to the heirs of Donald M. Ryerson. The other two-thirds go to Joan Ryerson and Anthony Ryerson with a provision postponing possession and giving them only the income until they reach the ages of 26 and 30. Under these provisions the following persons have present vested interests:

Isabelle McGenniss Ryerson (present life estate as to one-third).

Joan Ryerson (one-third of principal).

Anthony Ryerson (one-third of principal).
 (Isabelle McGenniss Ryerson was 44 years of age on the date of the gift). Accordingly, \$5,000 for each of the above beneficiaries (or a total of \$15,000) should be excluded from the gift to this trust, but the Commissioner refused to allow any amount to be excluded.

Copies of both of the trust agreements above mentioned have already been furnished to the Commissioner.

The claimant's gift tax for the year 1934 is correctly computed as follows:

Total gifts		\$161,965.00
Less exclusions		
Joseph T. Ryerson	\$5,000.00	
Edward L. Ryerson, Jr.	5,000.00	
Frost Trust dated October 31, 1933	10,000.00	
Ryerson Trust dated November 15, 1934	15,000.00	35,000.00
		<hr/>
		\$126,965.00
34 (Balance carried forward)		\$126,965.00
Exemption		50,000.00
		<hr/>
Net gifts		\$ 76,965.00
Correct tax		\$ 2,473.25

The difference of \$1,569.44 between this amount and the tax actually paid, should be refunded to the taxpayer, together with interest.

Mary M. Ryerson.

5. Date stamps were purchased from the Government

6. Amount to be refunded \$2065.00, plus interest.

7. Amount to be abated (not applicable to income or estate taxes) \$_____

8. The time within which this claim may be legally filed expires, under Section 328 of the Revenue Act of 1932, on November 11, 1939.

The deponent verily believes that this claim should be allowed for the reasons set forth in the statement hereto attached.

(Attach letter-size sheets if space is not sufficient)

Signed Mary M. Ryerson.

Sworn to and subscribed before me this 14th day of November, 1936.

Harry E. Arthurs

(Signature of officer administering oath)

(Seal)

Notary Public.

(Title)

◆ (See Instructions on Reverse Side)

Certificate.

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Claim No. _____

Character of assessment and period covered _____

List _____ Year _____ Month _____

Account No. or

Page _____ Line _____

- Amount assessed \$ _____

Total, \$ _____

Paid, Abated, or Credited

Date _____ Amount \$ _____

Pd. _____ Ab. _____ Cr. _____

Total, \$ _____

Claim No. _____

I certify that the records of this office show the following facts as to the purchase of stamps:

To Whom Sold or Issued _____

Kind _____ Number _____ Denomination _____

Date of sale or issue _____ Amount \$ _____

If special tax stamp, state:

Serial number _____

Period commencing _____

Collector of Internal Revenue.

(District)
Committee on Claims

Amount claimed \$ _____

Amount allowed \$ _____

Amount rejected \$ _____

Claim examined by _____

Claim approved by _____

Chief of Division.

Instructions.

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

37 Statement Attached to Claim for Refund of Gift Taxes—Year 1935.

The undersigned claimant filed a gift tax return for the year 1935 showing net gifts for the year of \$382,000; net gifts for preceding years of \$91,965; and a tax for the year of \$44,082.37. The claimant paid this tax on March 5, 1936.

Upon examining the 1934 and 1935 returns, the Commissioner increased the net gifts for 1934 to \$106,426, and assessed an additional tax for 1935 of \$940. The claimant paid this additional tax together with interest (or a total of \$971.06) on November 11, 1936.

The claimants' net gifts for the year 1934 were \$76,965, and her correct tax for the year 1935 was therefore \$42,957.37. The difference of \$2,065 between this amount and the tax actually paid should be refunded to the taxpayer, together with interest.

The differences between the Commissioner's and the taxpayer's figures as to the 1934 gifts are set forth and explained in a statement attached to a claim for refund filed by the taxpayer for the year 1934. A copy of said statement is hereto attached as Exhibit A and is made a part hereof.

Mary A. Ryerson.

Statement Attached to Claim for Refund of Gift Taxes—Year 1934.

The undersigned claimant filed a gift tax return for the year 1934 showing total gifts of \$161,965, exclusions of \$20,000 and net gifts of \$91,965; and paid tax thereon of \$3,223.25 on September 16, 1935. On examining the said return, the Commissioner increased the total gifts to \$171,426, reduced the exclusions to \$15,000, and increased the net gifts to \$106,426. This resulted in the assessment of an additional tax of \$819.44. The claimant paid this additional tax, together with interest (or a total of \$895.68), on November 11, 1936.

The gifts made by the claimant in the year 1934 consisted of four insurance policies issued by the Travelers Insurance Company and assigned as follows:

Policy No. 82A-NW-50 assigned December 18, 1934, to Joseph T. Ryerson.

Policy No. 82B-NW-50 assigned December 18, 1934, to Edward L. Ryerson.

Policy No. 110-A-NW-50 assigned December 26, 1934, to Donald McKay Frost and Mary Ryerson Frost, Trustees under Trust Agreement dated October 31, 1933.

Policy No. 110B-NW-50 assigned December 26, 1934, to Joseph T. Ryerson and Edward L. Ryerson, Trustees under Trust Agreement dated November 15, 1934.

The values of these policies on the dates of the respective gifts were as follows:

39 Policy No. 82A-NW-50—	\$ 40,696.50
Policy No. 82B-NW-50—	40,696.50
Policy No. 110A-NW-50—	40,286.00
Policy No. 110B-NW-50—	40,286.00
Total:	<u>\$161,965.00</u>

In examining the return, the Commissioner erroneously increased these values to a total of \$171,426.00.

The trust agreement of October 31, 1933, above mentioned, provides that one-fourth of the income of the trust shall be paid to Mary Ryerson Frost (daughter of this claimant) for life, and that the balance shall be added to principal. The agreement further provides that the trustees shall pay over the principal to Mary Ryerson Frost and her husband, Donald McKay Frost, upon their joint request. Both Mary Ryerson Frost and her husband have present vested interests in the trust: they are, in substance, the absolute owners of the property. Accordingly, \$5,000 for each of them should be excluded from the gift to this trust. The Commissioner allowed a deduction of \$5,000 on account of the gift to Mary Ryerson Frost, but he refused to allow a similar deduction on account of the gift to her husband.

Under the trust agreement of November 15, 1934, above mentioned, the proceeds of the insurance are to be held for the benefit of Isabelle McGennis Ryerson and her two children, Joan Ryerson and Anthony Ryerson, 40 and their descendants. The income from one-third of the trust property is to be paid to Isabelle McGennis Ryerson for her life, and afterwards this one-third is to go to the heirs of Donald M. Ryerson. The other two-thirds go to Joan Ryerson and Anthony Ryerson with a provision postponing possession and giving them only the income until they reach the ages of 26 and

30. Under these provisions the following persons have present vested interests:

Isabelle McGenniss Ryerson (present life estate as to one-third).

Joan Ryerson (one-third of principal).

Anthony Ryerson (one-third of principal).

(Isabelle McGenniss Ryerson was 44 years of age on the date of the gift). Accordingly, \$5,000 for each of the above beneficiaries (or a total of \$15,000) should be excluded from the gift to this trust, but the Commissioner refused to allow any amount to be excluded.

Copies of both the trust agreements above mentioned have already been furnished to the Commissioner.

The claimant's gift tax for the year 1934 is correctly computed as follows:

Total gifts		\$161,965.00
Less exclusions		
Joseph T. Ryerson	\$ 5,000.00	
Edward L. Ryerson, Jr.	5,000.00	
Frost Trust dated October 31, 1933	10,000.00	
Ryerson Trust dated November 15, 1934	15,000.00	35,000.00
		<hr/>
		\$126,965.00
41 Exemption		50,000.00
		<hr/>
Net gifts		\$ 76,965.00
Correct tax		\$ 2,473.25

The difference of \$1,569.44 between this amount and the tax actually paid, should be refunded to the taxpayer, together with interest.

Mary M. Ryerson.

42

"EXHIBIT E."

43

TREASURY DEPARTMENT

Washington

Office of

Commissioner of Internal Revenue

Address Reply To

Commissioner of Internal Revenue

and refer to

MT:ET:GT:CI-653-34-35-1st Illinois

Donor—Mary M. Ryerson

Dec. 10, 1936.

Mrs. Mary M. Ryerson,
135 South LaSalle Street,
Chicago, Illinois.

Madam:

Reference is made to the claims filed by you on November 16, 1936, for the refund of gift taxes of \$1,569.44 plus interest for the calendar year 1934, and \$2,065.00 plus interest for the calendar year 1935.

You contend in connection with the gifts made during the calendar year 1934 that (1) the Bureau erroneously increased the value of the insurance policies shown on the return from \$161,965.00 to \$171,426.00, (2) a deduction of ~~\$5,000.00~~ exclusion was allowed on account of the gift to Mary Ryerson Frost but no exclusion was allowed on account of the gift to her husband, (3) the gifts to Isabelle McGenniss Ryerson, Joan Ryerson and Anthony Ryerson in the trust agreement of November 15, 1934, represent present vested interests and \$15,000.00 should be excluded therefrom. It is also contended that by reason of the above changes a reduction in the tax liability will result for the calendar year 1935.

The objections made by you in your claim for the refund of gift taxes for the calendar year 1934 were also made in the protest filed by you against the Bureau's tentative determination of May 16, 1936. You were advised of the reasons for the disallowance of the items claimed in a letter dated August 13, 1936, a copy of which is enclosed herewith. The evidence in the files of the Bureau pertaining to this case has been examined and such evidence does not warrant any change. Accordingly, the action taken in Bureau letter of August 13, 1936, is

upheld. Inasmuch as no reduction in the tax liability is made for the calendar year 1934, no reduction in the tax liability results for the calendar year 1935.

44 In view of the foregoing, your claims filed on November 16, 1936, for the refund of \$1,569.44 plus interest and \$2,065.00 plus interest for the calendar years 1934 and 1935, respectively, are rejected in their entireties.

Respectfully,
Guy T. Helvering,
Commissioner.

By D. S. Bliss,
D. S. Bliss,
Deputy Commissioner.

45

"EXHIBIT F."

46

TREASURY DEPARTMENT

Washington

Office of

Commissioner of Internal Revenue

Address Reply To

Commissioner of Internal Revenue

and refer to

MT-ET-GT-Cl-653-34-35-1st Illinois

Donor—Mary M. Ryerson

Aug. 13, 1936.

Mrs. Mary M. Ryerson,
135 South LaSalle Street,
Chicago, Illinois.

Madam:

Reference is made to the protest filed by you against the tentative determination of your gift tax liability for the calendar years 1934 and 1935 as set forth in letter addressed to you by this office under date of May 16, 1936.

The following statement shows the action contemplated as a result of careful consideration of your protest:

Schedule A.

	Returned	Tentatively Determined	Proposed Determination
Item 1	\$40,696.50	\$42,856.50	\$42,856.50
Item 2	40,696.50	42,856.50	42,856.50
Item 3	40,286.00	42,856.50	42,856.50
Item 4	40,286.00	42,856.50	42,856.50

A re-check of the values of all of the above policies has been made. The values as tentatively determined are based on the information submitted by the insurance company which was forwarded by you with letter dated April 8, 1936. It appears that all of the policies are properly valued and no adjustments are warranted.

Exclusions \$20,000.00 \$10,000.00 \$15,000.00

The protest to the disallowance of exclusions under the insurance policies has been carefully reviewed. It appears that under the trust created on November 15, 1934 for the benefit of your daughter-in-law, Isabelle McGennis Ryerson, and her children, Donald Mitchell Ryerson, Joan Ryerson and Anthony Ryerson, they do not receive any benefits until after your death. It is therefore held that the gift is a future interest in property and no exclusion is allowed under the trust. A review of the trust indenture created October 31, 1933 has been made and the exclusion covering the gift to Mrs. Mary Ryerson Frost is now allowed as claimed on the return.

47 No exclusion can be allowed for Mary Jane McKay Frost or Mary Ryerson Frost, Second, as it is held that these last two mentioned grandchildren do not receive immediately the unrestricted right to the use, possession or enjoyment of any of the income or corpus of the trust; their interests are held to be future interests and accordingly no exclusions are allowable.

The following summary is submitted:

1934	
	Proposed Determination
Total gifts, 1934	\$171,426.00
Less: Total exclusions claimed	15,000.00
	<hr/>
Amount of gifts included	\$156,426.00
Less: Specific exemption	50,000.00
	<hr/>
Amount of net gifts, 1934	\$106,426.00
Tax on net gifts	\$ 4,042.69
Tax assessed on return	3,223.25
	<hr/>
Deficiency in tax, 1934	\$ 819.44

An examination of your return for the calendar year 1935 discloses the following:

Total gifts, 1935	\$392,000.00
Less: Total exclusions	10,000.00
Amount of net gifts, 1935	\$382,000.00
Total amount of net gifts for preceding year (1934)	106,426.00
Total net gifts	\$488,426.00
Tax on total net gifts	\$ 49,800.71
Tax on total amount of net gifts for preceding year (1934)	4,778.34
Tax on net gifts, 1935	\$ 45,022.37
Tax assessed on return	44,082.37
Deficiency in tax, 1935	\$ 940.00

There are enclosed herewith waivers, Forms 890A, which when executed and returned to this office will expedite the closing of your gift tax returns for the years 1934 and 1935.

This is not a final determination of the tax liability in this case and no appeal herefrom lies to the Board of Tax Appeals.

Your reply within twenty days from the date of this letter will be appreciated.

Respectfully,

D. S. Bliss,
D. S. Bliss,

Deputy Commissioner.

Encl.—Waivers.

48 And on, to wit, the 12th day of April, 1938, came James P. Johnson, one of Plaintiff's Attorneys, and filed in the Clerk's office of said Court his certain Affidavit in words and figures following, to wit;

49 IN THE DISTRICT COURT OF THE UNITED STATES.
 * * (Caption—47078) * *

AFFIDAVIT.

State of Illinois }
 County of Cook } ss.

James P. Johnson, being duly sworn, on oath deposes and says that he is one of the attorneys for Mary M. Ryerson, plaintiff in the above entitled cause, and that on this date he served a copy of the petition or complaint which was filed by the plaintiff in the said cause, on Michael L. Igoe, United States District Attorney for the Northern District of Illinois; and that on the same day he mailed a copy of said petition or complaint by registered letter to the Attorney General of the United States at Washington, D. C.

James P. Johnson.

Dated—April 12, 1938.

Subscribed and sworn to before me this 12th day of April, 1938.

(Seal)

Velma Olmstead,
 Notary Public.

50 And on, to wit, the 11th day of July, 1938, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit: Filed
July
1938.

51 IN THE DISTRICT COURT OF THE UNITED STATES.
 * * (Caption—47078) * *

ANSWER.

Comes now the defendant, United States of America, by its attorneys, Michael L. Igoe, United States Attorney for the Northern District of Illinois, Eastern Division, and David L. Bazelon, Assistant United States Attorney and for answer to the bill of complaint herein states:

1. The allegations contained in paragraph 1 of the complaint are admitted.

2. The allegations contained in paragraph 2 of the complaint are denied, except that it is admitted that this is a suit for the recovery of Federal Gift Taxes assessed against the plaintiff for the years 1934 and 1935 in the amount of \$1,569.44 and \$2,065.00 respectively, plus interest.

3. The allegations contained in paragraph 3 of the complaint are admitted.

4. The allegations contained in paragraph 4 of the complaint are admitted.

5. The allegations contained in paragraph 5 of the complaint are, for want of sufficient information and knowledge denied.

52 6. The allegations contained in paragraph 6 of the complaint are admitted.

7. The allegations contained in paragraph 7 of the complaint are admitted.

8. The allegations contained in paragraph 8 of the complaint are denied, except that it is admitted that gifts by way of assignment of the four insurance policies referred to in said paragraph were made by the plaintiff in the year 1934 as indicated, which policies were of the total value of \$171,426.00.

9. The allegations contained in paragraph 9 of the complaint are denied, except that it is admitted that the Commissioner of Internal Revenue, upon examining the said return for the year 1934, increased the values of the above mentioned policies to a total amount of \$171,426.00.

10. The allegations contained in paragraph 10 of the complaint are denied, except that reference is made to Exhibit A for the terms thereof, and except that it is admitted that the Commissioner of Internal Revenue allowed an exclusion of \$5,000.00 with respect to the insurance policy assigned to the trustees under the trust agreement on October 31, 1933.

11. The allegations contained in paragraph 11 of the complaint are denied, except that reference is made to Exhibit B for the terms thereof, and except that it is admitted that the Commissioner of Internal Revenue permitted no exclusion with respect to the insurance policy assigned to the trustees under the trust agreement of November 15, 1934.

12. The allegations contained in paragraph 12 of the complaint are denied.

13. The allegations contained in paragraph 13 of the complaint are denied.

53 14. The allegations contained in paragraph 14 of the complaint are admitted.

15. The allegations contained in paragraph 15 of the complaint are admitted.

16. The allegations contained in paragraph 16 of the complaint are admitted.

Wherefore, having fully answered the complaint of the plaintiff herein, defendant prays that said complaint be dismissed and costs awarded to the defendant.

M. L. Igoo,
Michael L. Igoo,
United States Attorney,
David L. Bazelon,
David L. Bazelon,
Assistant United States Attorney,
Attorneys for defendant.

State of Illinois }
County of Cook } ss.

David L. Bazelon, being first duly sworn, deposes and says that he is one of the duly appointed and qualified Assistant United States Attorneys for the Northern District of Illinois, and that in such capacity he is one of the duly authorized representatives of the defendant herein; that he is one of the persons whose name is subscribed to the foregoing Answer; that he is familiar with the contents of said Answer; and that the matters and things therein contained are true in substance and in fact except such matters and things as are denied for the reason that the affiant is without knowledge sufficient to form a belief, and that as to such matters the affiant affirms that he is without knowledge to form a belief.

David L. Bazelon.

Subscribed and sworn to before me this 11th day of July, A. D. 1938.

(Seal)

Anna L. Minahan,
Notary Public.

Filed
in
1934.
54 And on, to wit, the Fifth day of January, 1939, came the parties hereto by their attorneys and filed in the Clerk's office of said Court their certain Stipulation of Facts in words and figures following, to wit:

55 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—47078) • •

STIPULATION OF FACTS.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the facts herein stated are true and may be deemed to have been proved by proper evidence. This stipulation of facts is in addition to those set forth in the complaint and admitted in the answer. Each party, however, reserves the right to object to the materiality or relevancy of any of said facts and reserves the right to introduce other and further evidence not inconsistent with the facts herein stipulated or admitted in the pleadings.

1. In the year 1928 plaintiff purchased from The Travelers Insurance Company of Hartford, Connecticut, an insurance policy, No. 82-NW-50, upon the life of plaintiff in the face amount of \$100,000. The effective date of this policy was February 27, 1928, and it was fully paid on March 23, 1928. This policy was subsequently reissued in the form of two single premium life insurance policies, Nos. 82A-NW-50 and 82B-NW-50, each in the face amount of \$50,000, the original cost allocable to each being \$39,221. Exhibit "One" attached hereto is a true copy of policy No. 82A-NW-50, which with respect
56 to its terms is identical with policy No. 82B-NW-50. On December 18, 1934, plaintiff assigned the said policies to Joseph T. Ryerson and Edward L. Ryerson, respectively.

2. The cash values of the said policies Nos. 82A-NW-50 and 82B-NW-50 on February 27, 1934 (the last anniversary date preceding the date of the assignment), were \$40,696.50 each. On December 18, 1934, when the said policies were assigned, their cash values were still the same, that is, \$40,696.50 each. No greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing on them, or otherwise, than these cash values. If the Travelers Insurance Com-

pany had written similar policies on December 18, 1934 (the date of assignments), on the life of a person of the same age as the plaintiff, it would have charged \$42,856.50 each for such policies.

3. The plaintiff paid her gift tax with respect to the policies referred to in paragraph 1 upon the basis of a valuation of \$40,696.50 each. An additional assessment was made, and the additional tax which is in suit was paid upon the basis of a valuation of \$42,856.50 each.

4. In the year 1929 plaintiff purchased from the Travelers Insurance Company of Hartford, Connecticut an insurance policy, No. 110-NW-50 upon the life of plaintiff in the face amount of \$100,000. The effective date of this policy was January 5, 1929, and it was fully paid on January 25, 1929. This policy was subsequently reissued in the form of two single premium life insurance policies, Nos. 110A-NW-50 and 110B-NW-50, each in the face amount of \$50,000, the original cost allocable to each being \$39,765.50. Exhibit "Two" attached hereto is a true copy of policy No. 110A-NW-50, which with respect to its terms is identical with policy No. 110B-NW-50. On December 26, 1934, plaintiff assigned the first of the said policies to Donald McKay Frost and Mary Ryerson Frost, Trustees under a Trust Agreement dated October 31, 1933, a true copy of which Trust Agreement is attached to the complaint herein as Exhibit "A." On the same date plaintiff assigned the second of the said policies to Joseph T. Ryerson and Edward L. Ryerson, Trustees under a Trust Agreement dated November 15, 1934, a true copy of which Trust Agreement is attached to the complaint herein as Exhibit "B."

5. The cash values of the said policies Nos. 110A-NW-50 and 110B-NW-50 on January 5, 1934 (the last anniversary date preceding the date of the assignment), were \$40,286.00 each. On December 26, 1934, when the said policies were assigned, their cash values were still the same, that is, \$40,286.00 each. No greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing on them, or otherwise, than these cash values. If the Travelers Insurance Company had written similar policies on December 26, 1934 (the date of assignments), on the life of a person of the same age as the plaintiff, it would have charged \$42,856.50 each for such policies.

6. The plaintiff paid her gift tax with respect to the policies referred to in paragraph 4 upon the basis of a

valuation of \$40,285.00 each. An additional assessment was made, and the additional tax which is in suit was paid upon the basis of a valuation of \$42,856.50 each.

58 7. Mary Ryerson Frost and her husband, Donald McKay Frost, the beneficiaries named in the Trust Agreement of October 31, 1933, were at the date of the assignment of policy No. 110A-NW-50 to the Trustees under said Trust Agreement (and they still are) both living and of sound mind.

8. Joan Ryerson and Anthony Ryerson, beneficiaries named in the Trust Agreement of November 15, 1934, were at the date of the assignment of policy No. 110B-NW-50 to the Trustees under the said Trust Agreement the sole descendants of Donald Mitchell Ryerson. Donald Mitchell Ryerson died on May 8, 1932. On the date of the said assignment Joan Ryerson was eighteen years of age, and Anthony Ryerson was sixteen years of age. Isabel McGenniss Ryerson, another beneficiary named in the said Trust Agreement, was forty-four years of age at the date of the said assignment, and the value of her interest in the Trust Estate was increased by virtue of the said assignment of policy No. 110B-NW-50 by a sum in excess of \$5,000.

9. The plaintiff made no gifts subject to tax under the Gift Tax Act of 1932 as amended, prior to the year 1934. In that year she made no gifts subject to tax under the said Gift Tax Act other than by the assignment of the four insurance policies hereinbefore referred to. In the year 1935 her total net gifts subject to tax under the said Gift Tax Act were in the amount of \$382,000.

Wm. N. Haddad,
Bell, Boyd & Marshall,
Attorneys for Plaintiff.
William J. Campbell,
Attorney for Defendant.

Dated this 26th day of November, 1938.

59

EXHIBIT ONE.

**The Travelers Insurance Company
Hartford Connecticut**

(Out)

Number—82A-NW-50.

Amount of Insurance—\$50,000.

Insured—Mary M. Ryerson.

Age—72.

Beneficiary—Executors, Administrators or Assigns.

Single Premium—\$39,221.00.

Effective Date—February 27, 1928.

**By this Contract of Insurance Agrees to Pay
Insurance**

to the above named Beneficiary at the Home Office of the Company in Hartford, Connecticut, immediately on receipt of due proof of the death of the Insured during the continuance of this contract, the amount of insurance stated above.

Premium

This contract is issued in consideration of the signed application for this insurance which is made a part hereof and copy of which is attached hereto, and of the single premium hereinabove stated, payable on the delivery of this contract in exchange for a receipt signed by the President or a Secretary and countersigned by an authorized agent of the Company.

Effective Date

This insurance shall be effective from the date so specified above. The Insurance Years and all subsequent provisions for Cash Loans and Cash Values are computed from that date.

Incontestability

This contract shall be incontestable after it shall have been in force for a period of one year from its date of execution except for violation of the conditions of the contract relating to military or naval service in time of war if such service shall be restricted by indorsement hereon at date of execution. It is otherwise free from conditions as to residence, occupation, travel or place of death.

This contract is subject to the privileges and conditions recited on the subsequent page hereof.

In Witness Whereof The Travelers Insurance Company has caused this instrument to be executed at Hartford, Connecticut, this Twelfth day of December, 1934.

J. S. Scott,
Department Secretary.
 H. L. Flovin,
Recorder, Life Department.
 L. W. Britten,
President.

Single Premium Life Contract Non-Participating
 45739 Ed. January, 1927 No D. P.

Cash Loans—On demand in writing to the Company, the Insured may borrow without the consent of the Beneficiary at any time during the year on the sole security of this contract an amount not exceeding the cash value at the end of the current insurance year as specified in the table of cash values hereinafter set forth, provided: interest in advance at the rate of five and one-half per centum per annum shall be payable and the initial interest shall be deducted from the loan; the contract shall be assigned to the Company by the Insured and assignee, if any; the amount available at any time shall include any previous loan then unpaid. Loans other than to pay premiums on life contracts in this Company may be deferred for not exceeding sixty days after demand therefor is made. If the total indebtedness shall equal or exceed the cash value at the time of failure to repay any such loan or to pay interest when due, such failure shall render this contract null and void at the expiration of thirty-one days after due notice shall have been mailed by the Company to the last known address of the person to whom the loan shall have been made, and of the Insured, or assignee, if any.

Cash Values—Upon written request made by the Insured and upon surrender of this contract the Company will pay the cash value specified in the following table less any indebtedness of the Insured under this contract. These values are based upon the American Experience Table of Mortality with three and one-half per centum interest and at the end of the third year are at least

equal to the entire legal reserve on this contract less not more than two and one-half per centum of the amount insured hereby and such reserve is computed upon the same table by the net level premium method. At the end of the tenth year and thereafter the surrender value is the full reserve according to this standard. Payment of any cash value may be deferred for not exceeding sixty days after demand therefor is made.

Age 72.

At Expiration of the Following Years.....	1	2	3	4
Cash and Loan Value				
Per \$1,000 of Insurance.	701.75	734.87	775.48	785.63
At Expiration of the Following Years.....	5	6	7	8
Cash and Loan Value				
Per \$1,000 of Insurance.	796.02	813.93	831.91	841.47
At Expiration of the Following Years.....	9	10	11	12
Cash and Loan Value				
Per \$1,000 of Insurance.	850.81	868.65	877.74	886.77
At Expiration of the Following Years.....	13	14	15	16
Cash and Loan Value				
Per \$1,000 of Insurance.	895.78	904.68	913.32	921.49
At Expiration of the Following Years.....	17	18	19	20
Cash and Loan Value				
Per \$1,000 of Insurance.	929.20	936.64	943.93	950.74
At Expiration of the Following Years.....	21	22		
Cash and Loan Value				
Per \$1,000 of Insurance.	956.30	961.52		

Change of Beneficiary—Succession—Provided this contract is not assigned, the Insured may at any time and from time to time during its continuance change the Beneficiary, to take effect only when such change shall have been approved in writing by the Company, whereupon all rights of the former Beneficiary shall cease. If the Beneficiary or Beneficiaries or any of them named herein shall not survive the Insured, the proceeds of the contract or the share of the deceased Beneficiary or Beneficiaries, as the case may be, shall be paid to the executors, administrators or assigns of the Insured, unless otherwise provided in or by indorsement upon this contract.

General Conditions.

Modifications, etc.—No agent can make, alter or discharge this contract or extend the time for payment of premium, nor can this contract be varied or altered or its conditions waived or extended in any respect, except by the written agreement of the Company, in compliance with the law of the state in which the contract is issued, signed by the President, or one of the Vice-Presidents or Secretaries, whose authority will not be delegated.

Misstatement of Age—If the age of the Insured was incorrectly stated in the application for this contract, the amount payable hereunder shall be the insurance which the actual premium paid would have purchased at the true age of the Insured. Age will be admitted on satisfactory proof.

Assignment—No assignment hereof shall be binding upon the Company unless made by an instrument in writing indorsed upon this contract or attached hereto, nor unless a duplicate shall be furnished to the Company forthwith upon its execution. The Company shall not be held responsible for the validity of any such assignment. Any claim made under an assignment shall be subject to proof of interest and extent thereof.

Indebtedness—Any indebtedness to the Company on account of this contract will be deducted in any settlement hereunder.

Suicide—In case of suicide committed while sane or insane within one year from date of execution of this contract the limit of recovery hereunder shall be the premium paid.

Reserve Basis—The reserve for which funds are to be held upon this contract shall be computed upon the American Experience Table of Mortality and interest at 3½% per annum by the net level premium reserve method.

Entire Contract—This instrument and the application constitute the entire contract between the parties hereto, and all statements purporting to be made by or on behalf of the Insured shall in the absence of fraud be deemed representations and not warranties and no statement shall avoid the contract or be used in defence to a claim under the contract unless it be contained in the application herefor and a copy of such application is attached hereto.

65

Application for Life Insurance to

The Travelers Insurance Company, Hartford, Connecticut
 Use Black Ink as this is
 to be Photographed

(Stamped) 915 Mar 9 1929

1. a. My Name is (First Name) Mary (Middle Name or Initial) M. (Last Name) Ryerson

b. I was born in (State or Country) New Haven
 (Month) Aug (Day) 28 (Year) 1855

c. My age is 72

d. I am a citizen of U. S. A.

e. I am widow

2. Post office address (Street and Number) 2558 W.
 16th St. (City or Town) Chicago (County) Cook (State or Province) Ill.

3. I desire (Amount) \$100,000.00 (Form) Combination
 Single Prem. Life Annuity (Uniform Prem. or Prem. Reduction) Plan A. Plan with No Disability Provision

4. I desire to pay premiums Single Premium annually
 Special instructions Date Policy Feb. 27, 1928

5. At my death the insurance shall be payable to my
 Executors, Administrators, or Assigns unless a named
 beneficiary is herein designated.

First Name	Middle Name or Initial	Last Name
	Relationship	

(The right to change the beneficiary is reserved)

Born (if continuous instalment)

Month	Day	Year
-------	-----	------

6. a. My occupation and duties thereof are fully described as follows:

Note—It is not sufficient to state (for example) "Merchant," "Mechanic," "Salesman." State nature of business and whether duties are superintending only. None

b. During the past five years I have engaged in no other occupation—except as herein stated: None

c. I am not engaged nor do I contemplate engaging in any form of military or naval service, nor am I a military or naval reservist—except as herein stated:

d. I do not participate nor do I contemplate participating in any form of aerial navigation, or submarine operations—except as herein stated:

e. I do not contemplate changing my occupation or

traveling or living outside of the United States or Canada—except as herein stated:

7. a. I have no life insurance—except as herein stated:
(Company) (Amount) (Year Issued) None

b. I have submitted no application or medical examination for life insurance upon which I have not been notified of the action thereon—except as herein stated:

c. No application for insurance on my life has been declined or postponed, nor has any contract ever been issued other than as applied for—except as herein stated:

d. I have no accident insurance—except as herein stated:

8. I have never used liquors to excess, nor taken treatment for the liquor habit, nor have I ever used opium, chloral or any other narcotic—except as herein stated:

9. There is no history of insanity, cancer or tuberculosis among my parents, brothers or sisters—except as herein stated:

10. No change of climate has ever been sought or advised for the benefit of my health—except as herein stated:

11. I have not within two years occupied the same room or house with a consumptive—except as herein stated:

12. I am not deformed; I have had no bodily or mental disease, nor have I received medical or surgical attention within the past five years—except as herein stated:

For Home Office Indorsement Only

Contract rewritten as per amendment form #43970,
copy attached to contract. 12-12-34

(Stamped) 82 NW 50

I hereby agree for myself and for any person who may have or claim an interest in any contract which may be issued upon this application, as follows: 1. That in case of suicide, committed while sane or insane, within one year from the date of the contract issued, the limit of recovery thereunder shall be the premiums paid. 2. That every declaration herein above contained is true; and that the contract issued hereupon shall not take effect unless the first premium shall be actually paid while I am in good health in so far as I have knowledge or information. 3. That my acceptance of any contract issued on this application shall constitute a ratification by me of any cor-

rections, additions or changes made by the Company and noted in the space provided for "Home Office Indorsement Only".

Dated Chicago, Ill. Mar. 5, 1928.

Witness:

M. A. Law

Signature of the person applying for insurance (Sign the name in full)

Mary M. Ryerson,
Applicant.

Request of Applicant for Temporary Term Acceptance

(A) Pending consideration by the Company of the above application, I hereby apply for life insurance protection as of this date for the amount of insurance stated in the application payable to the Beneficiary therein named and in one sum unless other provision as to the manner of payments shall be made in the contract which shall be issued upon such application.

(B) I was examined for this insurance _____
19__ by Dr. _____

* (C) I have paid to the agent whose name appears hereon the sum of _____ Dollars.
(\$_____) _____ Applicant

* If Temporary Term Acceptance is Not desired but Full First Premium upon the contract applied for has been paid by the Applicant, cross out paragraphs (A) and (B) before Applicant signs.

To Be Completed and Signed by the Agent

I have known the Applicant for _____ years and I believe him to be in good health and working at his occupation stated in the application. I believe him to be an acceptable life insurance risk and recommend the issuance of a Temporary Term Acceptance. I remit herewith the amount which the applicant states he has paid me.

Agent

To Be Completed and Signed by the Manager

I have issued No. T. T. A. 4737659.

Dated _____ 19__

Manager

61 Use Black Ink as this is
to be Photographed

The Travelers Insurance Company, Hartford, Connecticut
The Undersigned, (Insured, Beneficiary and Assignee
if any) hereby request that in lieu of Contract No.
82 NW 50 upon the life of Mary M. Ryerson there be
issued a new contract as follows:

Amount	Form
1. \$100,000 Single Premium Life on the Uniform Pre- mium Plan with No — Disability Provision	

2a. Premiums Payable	Single Premium
	Month Day Year
b. Date of Birth	8 28 1855
Date new Policy	
c. 2-27-1928	
Ratable age	
d. 72	

Middle Name

First Name or Initial Last Name Relationship

3. Beneficiary Executors, Administrators or Assigns

4. Special instructions Reissue into two policies of
50M each.

In consideration of issue of the new contract and effective upon delivery thereof, the aforesaid original contract is hereby released and surrendered to The Travelers Insurance Company, Hartford, Connecticut, together with all right, title, claim, interest and benefit which the Undersigned have or may have thereunder; and the undersigned do hereby certify and declare that no person, firm or corporation other than those joining in this release have any interest or right therein or any title, legal or equitable, in whole or in part thereto.

Mary M. Ryerson Insured
Beneficiary
Assignee

Dated at Chicago, Illinois,
December 15, 1934.

19

62 **Policy Change Form 43970**

Its Uses and Requirements

1. To request any change which necessitates re-issue of a contract in force.
2. To request conversion of Term policies, either as of original date or attained age, the desired date of new issue to be specified in 2-C.
3. Signature of Beneficiary is required only for a change which depreciates the insurance protection or cash value of the existing contract.
4. Signature of assignee is required wherever an assignment is in effect.
5. Return of Term contract is not required where conversion is requested on form No. 43970.
6. Request for change other than conversion must be accompanied by the original contract, receipt to be given the Insured on the attached form.
7. The form must be completed and signed in ink. No changes or erasures will be admitted unless initialed by all whose signatures are required. As any error or omission will necessitate return of the form for correction it should be carefully checked before mailing to the Home Office.
8. Address all communications and return all policies intended for change to Change Division, Life Department, using Change Transmittal form No. 45625.

63 **Absolute Assignment Life Contract**

EME

Note: An assignment can be made only by an instrument in Writing Indorsed Upon The Contract Or Attached Thereto. A duplicate of such instrument must be furnished to the Company forthwith upon its execution, but the Company shall not be held responsible for the validity or effect of any such assignment.

For Value Received, I hereby assign, transfer, and set over unto Joseph T. Ryerson of _____ State of _____, his executors, administrators, successors or assigns, all my right, title, claim, interest, and benefit in and to the Contract of insurance issued by The Travelers Insurance Company, Hartford, Conn., on the life of Mary M. Ryerson and numbered 82(A)NW 50 and in and to the

Exhibit One.

contract of Life Insurance if any to which the contract hereby assigned shall be converted pursuant to the terms thereof, with the right to such assignee to exercise any and all options, rights and privileges in said contract given to the insured and/or beneficiaries or assignees hereby agreeing that all acts and things done and releases and discharges given by said assignee under this instrument shall be as binding and as effectual as if done or given by the undersigned personally.

In Testimony Whereof, I have hereunto set my hand and seal at Chicago, Illinois, this 18th day of December 1934.

Mary M. Byerson. (L. S.)

_____. (L. S.)

_____. (L. S.)

(All names should be signed in full)

in presence of

M. A. Law of Chicago, Ill.

V. R. Fitzgerald of Chicago, Ill.

_____ of _____

(Give residence of each witness.)

Over—The form on the reverse side hereof should be filled out.

64 The Travelers Insurance Company
Hartford, Connecticut

Dear Sirs:

Please send duplicate notice of premiums due under the Contract described in the within instrument to the following address:

(Name) _____ (Street and No.) _____

(City or Town) _____ (State) _____

To be signed by the Insured or Assignee.

Assignee should notify the Company immediately of any change in address.

66 The Travelers Insurance Company
 Hartford, Connecticut

 Number
 82A-NW-50
 Mary M. Ryerson
 Single Premium

 Life Contract
 Non-Participating

In event of death, notice should be given immediately to the nearest branch office of the Company.

It is not necessary for the Insured or the Beneficiary to employ any person to collect any benefit provided in this contract.

67 EXHIBIT TWO.

 The Travelers Insurance Company
 Hartford, Connecticut

 Amount of Insurance \$50,000.

Number—110A-NW-50

Insured Mary M. Ryerson.

Age 73.

Beneficiary Executors, Administrators or Assigns.

Single Premium \$39,765.50.

Effective Date January 5, 1929.

By This Contract of Insurance Agrees to Pay
Insurance.

To the above named Beneficiary at the Home Office of the Company in Hartford, Connecticut, immediately on receipt of due proof of the death of the Insured during the continuance of this contract, the amount of insurance stated above.

Premium.

This contract is issued in consideration of the signed application for this insurance which is made a part hereof and copy of which is attached hereto, and of the single premium hereinabove stated, payable on the delivery of this contract in exchange for a receipt signed by the President or a Secretary and countersigned by an authorized agent of the Company.

Effective Date.

This insurance shall be effective from the date so specified above. The Insurance Years and all subsequent provisions for Cash Loans and Cash Values are computed from that date.

Incontestability.

This contract shall be incontestable after it shall have been in force for a period of one year from its date of execution except for violation of the conditions of the contract relating to military or naval service in time of war if such service shall be restricted by indorsement hereon at date of execution. It is otherwise free from conditions as to residence, occupation, travel or place of death.

This contract is subject to the privileges and conditions recited on the subsequent page hereof.

In Witness Whereof The Travelers Insurance Company has caused this instrument to be executed at Hartford, Connecticut, this Twelfth day of December, 1934.

J. S. Scott,

Department Secretary.

H. L. Flavin,

Recorder, Life Department.

C. B. Butler,

President.

Single Premium Life Contract. Non-Participating.
45739 Ed. January 1927 No D. P.

Special Privileges.

Cash Loans—On demand in writing to the Company, the Insured may borrow without the consent of the Beneficiary at any time during the year on the sole security of this contract an amount not exceeding the cash value at the end of the current insurance year as specified in the table of cash values hereinafter set forth, provided: interest in advance at the rate of five and one-half per centum per annum shall be payable and the initial interest shall be deducted from the loan; the contract shall be assigned to the Company by the Insured and assignee, if any; the amount available at any time shall include any previous loan then unpaid. Loans other than to pay premiums on life contracts in this Company may be deferred for not exceeding sixty days after demand therefor is made. If the total indebtedness shall equal or exceed the cash value

at the time of failure to repay any such loan or to pay interest when due, such failure shall render this contract null and void at the expiration of thirty-one days after due notice shall have been mailed by the Company to the last known address of the person to whom the loan shall have been made, and of the Insured, or assignee, if any.

Cash Values—Upon written request made by the Insured and upon surrender of this contract the Company will pay the cash value specified in the following table less any indebtedness of the Insured under this contract. These values are based upon the American Experience Table of Mortality with three and one-half per centum interest and at the end of the third year are at least equal to the entire legal reserve on this contract less not more than two and one-half per centum of the amount insured hereby and such reserve is computed upon the same table by the net level premium method. At the end of the tenth year and thereafter the surrender value is the full reserve according to this standard. Payment of any cash value may be deferred for not exceeding sixty days after demand therefor is made.

Age 73.

At Expiration of				
the Following Years....	1	2	3	4
Cash and Loan Value				
Per \$1,000 of Insurance.	711.16	742.45	785.62	795.64
At Expiration of				
the Following Years....	5	6	7	8
Cash and Loan Value				
Per \$1,000 of Insurance.	805.62	823.51	841.47	850.81
At Expiration of				
the Following Years....	9	10	11	12
Cash and Loan Value				
Per \$1,000 of Insurance.	859.96	877.74	886.77	895.78
At Expiration of				
the Following Years....	13	14	15	16
Cash and Loan Value				
Per \$1,000 of Insurance.	904.68	913.32	921.49	929.20
At Expiration of				
the Following Years....	17	18	19	20
Cash and Loan Value				
Per \$1,000 of Insurance.	936.64	943.93	950.74	956.30
At Expiration of				
the Following Years....	21	22		
Cash and Loan Value				
Per \$1,000 of Insurance.	961.52	966.18		

Change of Beneficiary—Succession—Provided this contract is not assigned, the Insured may at any time and from time to time during its continuance change the Beneficiary, to take effect only when such change shall have been approved in writing by the Company, whereupon all rights of the former Beneficiary shall cease. If the Beneficiary or Beneficiaries or any of them named herein shall not survive the Insured, the proceeds of the contract or the share of the deceased Beneficiary or Beneficiaries, as the case may be, shall be paid to the executors, administrators or assigns of the Insured, unless otherwise provided in or by indorsement upon this contract.

General Conditions.

Modifications, etc.—No agent can make, alter or discharge this contract or extend the time for payment of premium, nor can this contract be varied or altered or its conditions waived or extended in any respect, except by the written agreement of the Company, in compliance with the law of the state in which the contract is issued, signed by the President, or one of the Vice-Presidents or Secretaries, whose authority will not be delegated.

Misstatement of Age—If the age of the Insured was incorrectly stated in the application for this contract, the amount payable hereunder shall be the insurance which the actual premium paid would have purchased at the true age of the insured. Age will be admitted on satisfactory proof.

Assignment—No assignment hereof shall be binding upon the Company unless made by an instrument in writing indorsed upon this contract or attached hereto, nor unless a duplicate shall be furnished to the Company forthwith upon its execution. The Company shall not be held responsible for the validity of any such assignment. Any claim made under an assignment shall be subject to proof of interest and extent thereof.

Indebtedness—Any indebtedness to the Company on account of this contract will be deducted in any settlement hereunder.

Suicide—In case of suicide committed while sane or insane within one year from date of execution of this contract the limit of recovery hereunder shall be the premium paid.

Reserve Basis—The reserve for which funds are to be held upon this contract shall be computed upon the American Experience Table of Mortality and interest at 3½% per annum by the net level premium reserve method.

Entire Contract—This instrument and the application constitute the entire contract between the parties hereto, and all statements purporting to be made by or on behalf of the Insured shall in the absence of fraud be deemed representations and not warranties and no statement shall avoid the contract or be used in defence to a claim under the contract unless it be contained in the application hereto and a copy of such application is attached hereto.
45738 No D. P.

68 Use Black Ink as it is to be Photographed.

The Travelers Insurance Company,
Hartford, Connecticut.

The Undersigned, (Insured, Beneficiary and Assignee if any) hereby request that in lieu of Contract No. 110NW50 upon the life of Mary M. Ryerson there be issued a new contract as follows:

1. Amount—\$100,000. Form—Single Premium Life. Uniform Premium on the Plan with No Disability Provision.

2A. Premiums Payable—Single Premium. B. Date of Birth—Month 8, Day 28, Year 1855. C. Date New Policy—1-5-1929. D. Ratable Age—73.

3. Beneficiary—Executors, Administrators or Assigns.

4. Special Instructions—Reissue into two policies of 50M each.

In consideration of issue of the new contract and effective upon delivery thereof, the aforesaid original contract is hereby released and surrendered to The Travelers Insurance Company, Hartford, Connecticut, together with all right, title, claim, interest and benefit which the Undersigned have or may have thereunder; and the undersigned do hereby certify and declare that no person, firm or corporation other than those joining in this release have any interest or right therein or any title, legal or equitable, in whole or in part thereto.

Mary M. Ryerson, Insured.

Beneficiary.

Assignee.

Dated at Chicago, Illinois, December 15, 1934.

Policy Change Form 43970.

Purposes and Requirements.

1. To request any change which necessitates re-issue of a contract in force.

2. To request conversion of Term policies, either as of original date or attained age, the desired date of new issue to be specified in 2-C.

3. Signature of Beneficiary is required only for a change which depreciates the insurance protection or cash value of the existing contract.

4. Signature of assignee is required wherever an assignment is in effect.

5. Return of Term contract is not required where conversion is requested on form No. 43970.

6. Request for change other than conversion must be accompanied by the original contract, receipt to be given the Insured on the attached form.

7. The form must be completed and signed in ink. No changes or erasures will be admitted unless initialed by all whose signatures are required. As any error or omission will necessitate return of the form for correction it should be carefully checked before mailing to the Home Office.

8. Address all communications and return all policies intended for change to Change Division, Life Department, using Change Transmittal form No. 45625.

Absolute Assignment Life Contract

Note: An assignment can be made only by an instrument in Writing Indorsed Upon The Contract Or Attached Thereto. A duplicate of such instrument must be furnished to the Company forthwith upon its execution, but the Company shall not be held responsible for the validity or effect of any such assignment.

For Value Received, I hereby assign, transfer, and set over unto The Trustee or Trustees or successors in trust under indenture of trust dated October 31, 1933 made between Donald McKay Frost and Mary Ryerson Frost and Donald McKay Frost and amendments or supplements thereto, all my right, title, claim, interest, and benefit in and to the Contract of insurance issued by The Travelers

Insurance Company, Hartford, Conn., on the life of Mary M. Ryerson and numbered 110 (A) NW 50 and in and to the contract of Life Insurance if any to which the contract hereby assigned shall be converted pursuant to the terms thereof, with the right to such assignee to exercise any and all options, rights and privileges in said contract given to the insured and/or beneficiaries or assignees hereby agreeing that all acts and things done and releases and discharges given by said assignee under this instrument shall be as binding and as effectual as if done or given by the undersigned personally.

In Testimony Whereof, I have hereunto set my hand and seal at Chicago, Illinois, this 26th day of Dec. 1934.

Mary M. Ryerson. (L. S.)

(All names should be signed in full)

in presence of

M. A. Law of Chicago, Ill.

V. R. Fitzgerald of Chicago, Ill.

(Give residence of each witness.)

Over—The form on the reverse side hereof should be filled out.

71 The Travelers Insurance Company
Hartford, Connecticut

Dear Sirs:

Please send duplicate notice of premiums due under the Contract described in the within instrument to the following address:

(Name) Mary Ryerson Frost, Donald M. Frost.

(Street and No.) 84 State Street.

(City or Town) Boston.

(State) Massachusetts.

To be signed by the Insured or Assignee.

Assignee should notify the Company immediately of any change in address.

72

Application for Life Insurance to

The Travelers Insurance Company, Hartford, Connecticut
Answers to Questions 22 to 29 Inclusive Required Only for

Short Medical Form or Non-Medical Consideration

Space numbered 28 is reserved for the Applicant to make any Additional Statements for which there is not room in the allotted space

Use Black Ink as this is to be Photographed	Ditto Marks Not To Be Used
--	----------------------------------

1. Full Name—First Name **Mary** Middle Name or Initial **M.** Last Name **Ryerson.** Race? **Caucasian, Mongolian, Malay, Negro, Indian (Answer) Caucasian.**

2. Place of birth? **New Haven, Conn.** Date of birth? Month **Aug.** Day **28.** Year **1855.** Age nearest birthday? Years **73.** Citizen of? **U. S. A.** Are you Married? **Widow.**

3. Post Office and Premiums Notice Address—Street and Number **2558 W. 16th St.** City or Town **Chicago.** County **Cook.** State or Province **Ill.**

4. Insurance applied for—Amount **100,000.00.** Form **Combination Single Premium Life Annuity, Plan A.** Uniform Premium or Premium Reduction. Premium Payable

Annually on the **Plan With No**
Disability Provision.

5. At my death the insurance shall be payable to my Executors, Administrators, or Assigns unless a named beneficiary is herein designated. First Name Middle Name or Initial Last Name Relationship If Trust Agreement is desired give Birth Date—**Joseph T. Ryerson, Edward L. Ryerson and Donald M. Ryerson, and Mary R. Frost,** daughter, in equal (copy illegible).

6. State your occupation—**None.**

7. Do you contemplate changing your occupation or traveling or living outside of the United States or Canada?

8. Are you engaged or do you contemplate engaging in Military or Naval Service?

9. Have you ever made an Aerial Flight? If so give particulars in Supplemental Statement.

10. What accident insurance have you? Health insurance?

11. Have you ever made application or had medical examination for life insurance upon which you have not been notified of the action thereon?

12. Has any application for insurance on your life been declined, postponed, rated up or policy issued other than as then applied for?

13. Have you ever been examined for life insurance without insurance having been issued on such examination?

14. State all Life insurance carried by you—Company Travelers. Amount 100,000. Year Issued 1925. Dis. Prov. Mo. Income.

15. Will insurance hereby applied for replace any existing insurance?

16. Have you ever taken treatment for liquor habit?

17. Have you ever used opium, chloral, or other narcotics?

18. Have you within two years occupied the same room or house with a consumptive?

19. Has any change of climate or occupation ever been made or advised for the benefit of your health?

20. Have you within the past five years suffered any bodily or mental disease or infirmity?

21. Have you within the past five years received: Medical advice or attention? Surgical advice or attention?

Note: Completion of Statements 22 to 29 Inclusive Not Required if Full Medical Examination Blank is to be Completed.

22. Have you an hernia? Have you lost the sight of either eye? Is your hearing impaired? Have you had an amputation?

23. Have you ever had: Epilepsy? Syphilis?
Vertigo or Dizziness? Diabetes? Tuberculosis?
Disease of Brain or Nervous System?

24. Give Details as Indicated by the Following Headings Explaining all Affirmative Answers Applicable to Questions 16 to 23 inclusive? Illness or Condition?
How Long Ill? Complications? Fully Recovered?
Month Year No. of Attacks Physicians Consulted

25. Family History. Age if Living. State of Health. Age at Death. Cause of Death. Duration of Fatal Illness. Father

Mother

Brothers, Sisters—No. Living.

Brothers, Sisters—No. Dead.

26. What is your height in shoes? ft. in.

27. What is your exact weight in ordinary clothes?
lbs.

28. Have you during the past two years—Gained weight? How much? Lost weight? Cause?

29. Are you now in good health?

30. Additional Statements by Applicant.

For Home Office Indorsement Only—Contract rewritten as per amendment form #43970, copy attached to contract. 12-12-34. 110 NW 50.

31. I hereby agree for myself and for any person who may have or claim an interest in any contract which may be issued upon this application, as follows: A. That in case of suicide, committed while sane or insane, within one year from the date of the contract issued, the limit of recovery thereunder shall be the premiums paid. B. That every statement herein above contained is true; and that the contract issued hereupon shall not take effect unless the first premium shall be actually paid while I am in good health in so far as I have knowledge or information. C. That my acceptance of any contract issued on this application shall constitute a ratification by me of any corrections, additions or changes made by the Company and noted in the space provided "For Home Office Indorsement Only". D. That no agent can make, alter or discharge any contract issued on this application or extend the time for payment of premiums on such contract, nor can such contract be varied or altered or its conditions waived or extended in any respect except by the written agreement of the Company, signed by the President, or one of the Vice-Presidents or Secretaries whose authority will not be delegated.

32. I have paid to..... the sum of.....
..... (\$.....) Dollars and hold this receipt bearing the number imprinted hereon.

Dated at Chicago, Ill., Jan. 5, 1929.

Witness—M. A. Law.

Mary M. Ryerson
Signature in full of person applying
for insurance

5001766

74 The Travelers Insurance Company
 Hartford, Connecticut

 Number
 110A-NW-50

 Mary M. Ryerson
 Single Premium

 Life Contract
 Non-Participating

*In event of death, notice should be given immediately to the nearest branch office of the Company.

It is not necessary for the Insured or the Beneficiary to employ any person to collect any benefit provided in this contract.

75 And on, to wit, the 31st day of March, 1939, there was filed in the Clerk's office of said Court certain
OPINION OF JUDGE PHILIP L. SULLIVAN in words and figures following, to wit:

Filed
Mar
1939

76 * * (Caption—47078) * *

This suit is brought under the Tucker Act (United States Code, Chap. 28, Sec. 41 (20)) for the recovery of gift taxes for the years 1934 and 1935. The tax was assessed by the Commissioner of Internal Revenue pursuant to the Gift Tax Act of 1932 as amended. Plaintiff paid the tax and now alleges that it was wrongfully exacted. The total amount for both years is \$3,764.24 plus interest.

Only issues of law are involved and they may be stated as follows:

1. Where a gift is made of a fully paid life insurance policy, is the cash surrender value on the date the gift is made determinative of the fair market value for gift tax purposes, and

2. Where a gift is made in trust are the beneficiaries, rather than the trust, the donee of the gift for the purpose of determining the number of exclusions of \$5,000 allowable under Sec. 504 (b) of the Revenue Act of 1932?

Prior to 1934 plaintiff had purchased two insurance policies upon her own life in the face amount of \$100,000 each and in 1934 she had each of these policies split up into two fully paid single premium policies, each in the amount of \$50,000. For the purpose of clarity I shall designate the policies as policies A, B, C, and D.

In December of 1934, plaintiff assigned policies A and B to her two sons. The cash surrender values of the policies on the date of assignment were \$40,696.50 each. A few days later she assigned policies C and D when the cash surrender values of these two policies were \$40,286.00 each.

It is stipuated that no greater amount could have been realized on the four policies by surrendering, or borrowing on them, or otherwise, than their cash surrender value. Plaintiff paid her gift tax on the basis of this cash surrender value, but the Commissioner refused to accept this as their true value. He chose instead to value them at the price the same insurance company would have charged for similar policies on the date of the assignment on the life of a person of the same age, sex, and condition of health as the plaintiff was at that time. This value he found to be \$42,856.50. Upon this basis, the Commissioner assessed and plaintiff paid, the additional tax which is in suit.

With respect to policies A and B no controversy exists except as to their valuation. Regarding policies C and D, however, there is also a controversy concerning the number of exclusions to be allowed under Sec. 504 (b) of the Gift Tax Act of 1932.

Considering the first issue, we find that Sec. 506 of the Gift Tax Act of 1932 provides:

"If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift." (U. S. C. A. Title 26, Sec. 555.)

77 Article 19 of Treasury Regulation 79, promulgated under the Revenue Act of 1932 reads:

"* * * The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell * * *"

Plaintiff maintains that the values here, with a willing buyer and a willing seller, could be no higher than those set forth in the cash surrender value. The defendant con-

tends that this is merely an arbitrary figure fixed by the insurance company, and that if a policy holder wishes to surrender his policy he is forced to accept this predetermined price. This, defendant says, is merely its forced sale value and cannot be regarded as a reliable criterion of real value.

The Board of Tax Appeals has consistently held that the cash surrender value of a policy is the valuation to be considered for taxation purposes: *Ernest A. Cronin v. Commissioner*, 37 B. T. A. 914 (1938); *Mary M. Haines v. Commissioner*, 37 B. T. A. 1013 (1938); *Charles Lockhart, et al. Executor v. Commissioner*, C. C. H. 1938 Par. 7301 B, C. C. H. dec. No. 10101-B (1938); *Madeline D. Powers v. Commissioner*, C. C. H. Dec. No. 10, 562-E; '39, Vol. 3, p. 8586 (Jan. 9, 1939) *Henry W. Corning v. Commissioner*, C. C. H. Dec. No. 10,551-G; '39, Vol. 3, p. 8576, (Dec. 8, 1938). Opposed to these cases we have *Lucas v. Alexander*, 279 U. S. 573, where it was necessary for the court to determine the value of a policy on March 1, 1913, in order to arrive at the taxable gain accruing since that date. The court said (p. 579):

"Under the statute, market price of the taxpayer's property on that date, where ascertainable, may be resorted to as generally a sufficiently definite and trustworthy gauge of the gain which has later accrued. But where the property has no market value, the statute must be interpreted in the light of its purpose to ascertain taxable gains accruing since March 1, 1913. Hence, in such a case, its fair value on the critical date is not necessarily what might have been realized upon it by a forced liquidation by accepting the unfavorable loan or surrender value
* * *."

It is my belief that the cash surrender value is not the actual value of a policy but is purely an arbitrary figure fixed by the insurance company. Vance on Insurance on pp. 55-6 states:

"* * * but, inasmuch as insurance companies desire to discourage the surrender of policies so far as they can equitably do so, the surrender value fixed upon a policy is usually set at a considerably lower figure than that which would be established by its reserve value. It seems that, in the absence of a specified promise so to do, the insurer is under no obligation to pay any portion of the reserve value of a policy upon its surrender."

Here the value of the gift made by the plaintiff should not be computed by a portion of its paid-in premiums, as the cash surrender value is determined, but rather by what it would cost to duplicate such a gift as of the date of the assignment.

78 The cash surrender value is the market value only of a surrendered policy, one in which the investment upon life has been terminated. It is the value of a policy computed by subtracting the insurance already received and other expenses from the amount of the premiums paid in. It does not place any value upon the investment in the insured's life expectancy.

In the case at bar the donor did not make a gift of paid-in premiums. She made a gift of an investment. The market value of that investment is what it would cost to duplicate the gift upon the day it was made. Had the donor considered she was making a gift of paid-in premiums she could have obviated the necessity of buying the policies and have made a direct transfer of the initial premium to the trust. Or she could have surrendered the policies herself and made a transfer of the cash surrender value. But she did not do this because she believed that she was making a gift of something more. She was giving the sum total of the paid-in premiums, after the insurance received had been deducted, plus an investment in her life expectancy. That additional feature, the investment in her life expectancy, which is not valued in the cash surrender of a policy, must be determined to obtain the true value of this policy. The true value of a life insurance policy still in force can be ascertained only by the cost of duplicating that policy on the date of the gift.

That an insurance policy is worth more than its cash-surrender value is recognized by the bankruptcy courts which allow a bankrupt to keep his policy providing he pays to the trustee the cash-surrender value. If the policy were worth only this surrender value the courts would not grant this privilege nor the bankrupt ever avail himself thereof.

The rule is the price that any person of the same age, sex, and condition of health as the insured would have to pay for a similar policy in the same insurance company on the date the gift was made. This is a reasonable standard and one agreed upon by a willing buyer and a willing seller both of whom are acting without compulsion.

The second issue concerns the number of exclusions of

\$5,000 which should be allowed plaintiff under Sec. 504 (b) of the Gift Tax Act of 1932. That section provides that in cases of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first \$5,000 of such gifts shall not be included in the total amount of gifts made during such year for the purpose of determining the net gifts.

On December 26, 1934, plaintiff assigned policy C to Donald McKay Frost and Mary Ryerson Frost, trustees under an indenture of trust dated October 31, 1933. Section 1 of that indenture provides that the trustees shall pay one-fourth of the income of the trust to Mary Ryerson Frost during her life and accumulate the balance. Section 2 provides that the trustees, upon receipt of a request signed by Donald McKay Frost and Mary Ryerson Frost, shall distribute and pay over the principal of the trust to said Donald McKay Frost and Mary Ryerson Frost or their issue as shall be specified in said request. Plaintiff argues that the two beneficiaries have present vested interests and are in substance absolute owners of the property, and that, accordingly, \$5,000 for each of them should be excluded from this gift. The Commissioner allowed but one exclusion.

79 Plaintiff assigned policy D to Joseph Ryerson and Edward Ryerson, trustees under an indenture of trust dated November 15, 1934. This is a trust of life insurance policies which provides for certain distributions upon the death of the grantor in the following manner; if Isobelle McGenniss Ryerson, one of the beneficiaries, survives the grantor the trustees are to divide the trust estate into two portions, one portion comprising two-thirds in value of the trust estate, and the other portion one-third. Isobelle McGenniss Ryerson is then to receive the income upon one-third the estate for her life with remainder over to certain heirs. Two-thirds of the estate, or all of the estate, if Isobelle McGenniss Ryerson does not survive the grantor, is to be delivered to the descendants of grantor's son Donald Mitchell Ryerson, who shall survive the grantor.

It is stipulated that Donald Mitchell Ryerson died prior to the assignment in question, leaving as his sole descendants Joan and Anthony Ryerson.

Under the first assignment two exclusions should have been allowed. The power of control over the property which the trustees could exercise in their own favor is a present interest in the property. The government's

contention that Donald McKay Frost and Mary Ryerson Frost are not the donees of the gift because neither has individual control over the property but must act jointly with the other is without merit for under such reasoning a gift of a bank deposit, payable jointly to both of two persons (and not either) would be a gift to no one since neither had complete individual control. Yet it could not be contended that the bank was the donee.

Under the second assignment all three beneficiaries have present interests and therefore three exclusions should have been allowed. It is contended that in both the first and second assignment the trust and not the beneficiaries were the donees for the purpose of exclusions. But it is the donative intent and effect that indicates the actual donees. The intent was to confer a benefit upon the beneficiaries and not upon the trust. The transfer of mere legal title is not a transfer of anything valuable. Conceding that there is a transfer of legal interest to the trustees, still there is a simultaneous gift of an equitable interest to each beneficiary and it is the equitable transfer that should be taxable since it is the only one by which the donor has parted with, or the donee received, anything of value.

The case of *Davidson v. Welch*, (D. C. Mass. 1938) 22 F. Supp. 728, affirmed by the Circuit Court of Appeals under the name of *Welch v. Davidson* on March 2, 1939 (C. C. H. Fed. Tax Service Par. 9360), has reviewed the series of decisions indicating that the trust and not the beneficiaries are the donees. In facts similar to the case at bar the court held that the beneficiaries had present and not future interests and that the beneficiaries and not the trust were the donees. The court thereupon allowed an exclusion for each of seven beneficiaries. In affirming the district court the circuit court of appeals said:

80 "The statute of 1932, like that of 1924, was 'not aimed at every transfer of legal title without consideration.' It was aimed at transfers that 'had come to be identified more nearly with a change of economic benefits than with technicalities of title', at 'transfers of the title that have the quality of a gift.' Surely transfer of title to the trustee did not partake of the quality of a gift. The trustee was not the object of the plaintiff's bounty. The transfer to it of the bare legal title effected 'no change of economic benefits' in its behalf. The beneficiaries are the donees."

I find and rule therefore that the policies are to be valued in accordance with this opinion and that two exclusions of \$5,000 each should be allowed in regard to the assignment of policy C and three conclusions in regard to the assignment of policy D.

March 31, 1939.

Philip L. Sullivan,
Judge.

81 And on, to wit, the 29th day of June, 1939, there was filed in the Clerk's office of said Court a certain OPINION of Judge Philip L. Sullivan, in words and figures following, to wit:

Filed
June
1939.

* * (Caption—47078) * *

In recent communications from plaintiff, the court is asked to reconsider its decision in the above entitled cause handed down on March 31st, 1939, wherein it was held, among other things, that the value for gift tax purposes of an assigned insurance policy is not the cash surrender value, but is the amount it would cost to procure a similar policy from the same insurance company on the date of the gift. Suggested findings of fact and conclusions of law have been presented to the court, but judgment has not as yet been entered.

Plaintiff bases her request for reconsideration upon the fact that at the time the gift was made there was in effect a Treasury Regulation which explicitly stated that the value of an insurance policy for gift tax purposes is its cash surrender value. Article 2 (5) Treasury Regulation 79. Plaintiff also cites two recent cases, both holding that under Article 2 (5) of Treasury Regulation 79 an irrevocable assignment of a life insurance policy constitutes a gift in the amount of its net cash surrender value.

Blaffer v. Commissioner, 103 Fed. (2) 489. (CCA 5th Cir.) decided April 26th, 1939.

Commissioner v. Haines, (CCA 3rd Cir.) decided June 14th, 1939, and not yet reported.

The decision of March 31st, 1939, in the instant case was based solely upon my construction of Sec. 506 of the Revenue Act of 1932, which provides that

"if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift."

Treasury Regulation 79 is now for the first time called to my attention and only Article 2(5) is quoted. However, in considering the request for a reconsideration of my former holding, I have read Treasury Regulation 79 in its entirety. In neither of the above cited cases does it appear that the courts had this regulation before them in its entirety.

Article 1 of the Regulation deals with the imposition of the tax.

Article 2 (a portion of which is here involved) reads as follows:

83 "Transfers Reached: The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Thus, for example, a taxable transfer may be effected by the declaration of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of a contract of insurance, or the transfer of cash, certificates of deposit, or Federal, State or Municipal bonds. Inasmuch as the tax also applies to gifts indirectly made, all transactions whereby property or property rights or interests are donatively passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax. *In the following examples of transactions resulting in taxable gifts it will be understood that the transactions occurred after the date of the enactment of the statute . . . and were not for an adequate and full consideration in money or money's worth:*

(1) The transfer of property by a corporation without an adequate and full consideration in money or money's worth to B *is a gift* from the stockholders of the corporation to B.

(2) The transfer of property to B where there is imposed upon B an obligation of paying a commensurate annuity to C *is a gift* to C.

(3) The payment of money or the transfer of property to B in consideration whereof B is to render a service to C, *is a gift* to C or both B and C, depending on whether the service to be rendered by B to C is or is not an adequate and full consideration in money or money's worth for that which is received by B.

(4) Where A creates a joint bank account for

himself and B *there is a gift* to B when he draws upon the account for his own benefit to the amount drawn.

(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, *constitutes a gift* in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.

(6) Where premiums on a life insurance policy are paid by an insured who has none of the legal incidents of ownership in the policy, and the beneficiary is other than the insured's estate, each premium payment *is a gift* in the amount thereof.

(7) Where A purchases property and has the title thereto conveyed to himself and wife as tenants by the entirety, *there is a gift* to the wife in the amount of the value of her interest in the property determined in accordance with the law governing the rights of the tenants, the probability of survivorship being determined by tables of mortality."

It seems to me from a consideration of the title and the text of Article 2 that its sole purpose is to define and give examples of what are taxable gifts. In each subdivision, the subject is followed by the words "*is a gift*" or "*there is a gift*," or "*constitutes a gift*", the intent thereof not being to fix the value of the gifts, because 84 that is done by Article 19 of the Regulation, which is entitled: "*Valuation of property*" and wherein the value of the various types of property is set out. Nowhere, however, in that section is any rule laid down as to how to arrive at the value of an irrevocable assignment of a life insurance policy, for tax purposes. Subdivision 6 of Article 19 reads:

"Intangibles: *Intangibles not specifically mentioned in this article should be valued in accordance with the rule laid down in subdivision (1) of this article.*"

Subdivision (1) of Article 19 reads:

"General. The statute provides that *if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.* The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any

compulsion to buy or sell. Where property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted as the amount of the gift. All relevant facts and elements of value should be considered in every case."

The rules of statutory construction require that in construing Treasury Regulations, that the same intent be given to them that the Treasury Department itself intended they should have. In arriving at this intent the court must take into consideration the entire regulation. Article 2 is entitled "Transfers Reached", and first defines four types of gifts or transfers, followed by the words "Thus for example, a taxable transfer may be effected by the declaration of a trust," etc., and again, "In the following examples of transactions resulting in taxable gifts" etc., setting out seven examples, the fifth example being the one here involved. I am of the opinion that the words used in Example 5 cannot be construed as intending to fix the value of an irrevocably assigned insurance policy for taxable purposes, because that would not be in accord with the title of Article 2 which covers "Transfers Reached," and would also be in conflict with Article 19 of the Regulation which is entitled "Valuation of Property" and logically should govern all questions as to value. Article 2 seems to me as intended to describe every type of transfer and gift upon which a tax might be imposed, and to set out examples of such transfers and gifts.

The Revenue law of 1924 contained the first gift tax provision, which was repealed in 1926. Six years later, in the Revenue Act of 1932, a tax was again placed on gifts. (47 Stat. 248; 26 U. S. C. A. 555.) Under Section 506 thereof it was provided that "if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift." Treasury Regulation 79 (containing Article 2 (5) as set out above) was issued in 1932. Section 506 was re-enacted in the Revenue Acts of 1934, 1935 and 1936, and Article 2 (5) of the Treasury Regulation remained the same in 1934 and 1935. However, in 1936 the Regulation was changed by Article 19 (9) which provided that the value of the gift was not "the cash surrender value of the policy, but the cost of the contract."

In arriving at my original decision I construed Section

506 only, Regulation 79 not having then been called to my attention, and now after a careful consideration of Regulation 79 in its entirety, I see no reason for reversing my decision of March 31st, 1939.

Philip L. Sullivan,
Judge.

June 29, 1939.

86 And afterwards, to wit, on the 29th day of June, A. D. 1939, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit: **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Filed
June
1939.

87 * * (Caption—47078) * *

The court having rendered its opinion upon the facts and the law in the above entitled cause, does hereby, pursuant to Rule 52 of the Rules of Civil Procedure, make the following findings of fact and conclusions of law.

Findings of Fact.

The plaintiff, Mary M. Ryerson, resides at 1075 East Ringwood Road in Lake Forest, Lake County, Illinois.

In 1928 and 1929, plaintiff purchased two insurance policies from The Travelers Insurance Company upon her own life in the amount of \$100,000 each. Each of these policies was subsequently reissued in the form of two fully paid single premium policies in the amount of \$50,000 each. The original cost allocable to two of these policies, those numbered 82A-NW-50 and 82B-NW-50 (hereinafter referred to as policies A and B respectively) was \$39,221 each, and the original cost allocable to the remaining two policies, numbered 110A-NW-50 and 110B-NW-50 (hereinafter referred to as policies C and D respectively) was \$39,765.50 each.

On December 18, 1934, plaintiff assigned policies A and B to her sons, Joseph T. Ryerson and Edward L. Ryerson, respectively. On December 26, 1934, plaintiff assigned policy C to Donald McKay Frost and Mary Ryerson Frost, trustees under an indenture of trust dated October 31, 1933. On the same date, plaintiff assigned

policy D to Joseph T. Ryerson and Edward L. Ryerson, trustees under an indenture of trust dated November 15, 1934.

The cash surrender value of policies A and B on the date they were assigned was \$40,696.50 each and the cash surrender value of policies C and D on the date of assignment was \$40,286.00 each. No greater amount could have been obtained or realized upon policies by surrendering them or borrowing on them, or otherwise, than these surrender values.

If The Travelers Insurance Company had written similar policies on the dates of assignment on the life of a person of the same age as the plaintiff, it would have charged \$42,856.50 each for such policies.

The plaintiff paid her gift tax with respect to the policies A and B upon the basis of a valuation of \$40,696.50 each. An additional assessment was made, and the additional tax which is in suit was paid upon the basis of a valuation of \$42,856.50 each.

The plaintiff paid her gift tax with respect to the policies C and D upon a valuation of \$40,286.00 each. An additional assessment was made, and the additional tax which is in suit was paid upon the basis of a valuation of \$42,856.50.

The Indenture of Trust dated October 31, 1933, to the trustees under which policy C was assigned, provides in Section 1 that the trustees shall pay one-fourth of the income of the trust to Mary Ryerson Frost during her life, and accumulate the balance. Section 2 of the Indenture provides that the trustees shall at any time, upon receipt of a request signed by Donald McKay Frost and Mary Ryerson Frost, while they are both living and of sound mind, distribute and pay over the principal of the trust to the said Donald McKay Frost, Mary Ryerson Frost and their issue, or to any one or more of them, as shall be specified in the said request.

Mary Ryerson Frost and Donald McKay Frost are, and were at the time of the said assignment, living and of sound mind.

The Indenture of Trust dated November 15, 1934, to which policy D was assigned, creates a life insurance trust of insurance upon the life of the grantor, whereunder there were three beneficiaries at the time of the assignment.

On or about September 16, 1935, plaintiff filed with the

Collector of Internal Revenue at Chicago, Illinois, a gift tax return for the calendar year 1934, pursuant to the Gift Tax Act of 1932, as amended, reporting gifts of \$161,965, exclusions of \$20,000, deductions of \$50,000, net gifts of \$91,965 and a tax of \$3,223.25. The plaintiff paid this tax on that date to the said Collector of Internal Revenue, together with interest in the amount of \$96.70.

On or about March 5, 1936, plaintiff filed with said Collector of Internal Revenue a gift tax return for the calendar year 1935, reporting gifts, other than charge-
88 able, of \$392,000, charitable gifts of \$4,000, exclusions of \$10,000, net gifts of \$382,000, net gifts for the preceding year of \$91,965, total net gifts of \$473,965 and a tax of \$44,082.37. The plaintiff paid this tax to the said Collector of Internal Revenue on that date.

The plaintiff made no gifts subject to tax under the Gift Tax Act of 1932 as amended prior to the year 1934. In that year she made no gifts subject to tax under the said Gift Tax Act ~~other~~ than by the assignment of the four insurance policies hereinbefore referred to. In the year 1935, her total net gifts subject to tax under the said Gift Tax Act were in the amount of \$382,000.

The Commissioner of Internal Revenue, upon examination of the said return for the year 1934, increased the total gifts to \$171,426, reduced the exclusions to \$15,000, and increased the net gifts to \$106,426. This resulted in the assessment of an additional tax for the year 1934 of \$819.44. The plaintiff paid this additional tax, together with interest of \$76.24 (or a total of \$895.68) to the said Collector of Internal Revenue at Chicago, Illinois, on November 11, 1936.

The Commissioner of Internal Revenue, upon examination of the said return for the year 1935, increased the net gifts for 1934 to \$106,426, and the total net for 1934 and 1935 to \$488,426, and, on that basis, assessed an additional tax for 1935 of \$940. The plaintiff paid this additional tax, together with interest of \$31.06 (or a total of \$971.06), to the said Collector on November 11, 1936.

On November 16, 1936, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of \$1,569.44, plus interest, of the gift tax paid by her for the year 1934.

On November 16, 1936, plaintiff filed with the Collector of Internal Revenue at Chicago, Illinois, a claim for refund of \$2,065.00, plus interest, of the gift tax paid by her for the year 1935.

74 *Findings of Fact and Conclusions of Law.*

Both of the said claims for refund were duly forwarded to the Commissioner of Internal Revenue and were considered by the Commissioner on the merits and were eventually disallowed or rejected. The notice of disallowance or rejection on both claims was mailed to the taxpayer by registered mail, as required by Section 1103(a) of the Revenue Act of 1932, on December 10, 1936.

The Commissioner determined that plaintiff was entitled to one rather than to two exclusions of \$5,000 each under Section 504(b) of the Gift Tax Act because of the assignment of policy C, and that she was entitled to no exclusion, rather than to three, because of the assignment of policy D.

Plaintiff's gift tax for the years 1934 and 1935 is found to be correctly computed as follows:

1934	
Total Gifts	\$171,426
Less exclusions	35,000
	<hr/>
	\$136,426
Exemption	50,000
	<hr/>
Net Gifts	\$ 86,426
Tax	\$ 2,946.30
Interest from March 15, 1935 to September 16, 1935	\$ 88.87

1935	
Total net gifts for year	\$382,000
Gifts for preceding year	86,426
	<hr/>
Total net gifts	\$468,426
Tax	\$ 43,666.95

Plaintiff overpaid her gift tax for the year 1934 in the amount of \$1,096.39, and paid interest on a part of the said overpayment in the amount of \$7.82 on September 16, 1935, and in the amount of \$76.24 on November 11, 1936. Plaintiff overpaid her gift tax for the year 1935 in the amount of \$1,355.42, and paid interest on a part of the said overpayment in the amount of \$31.06 on November 11, 1936, making a total overpayment for the years 1934 and 1935 of \$2,566.93.

89

Conclusions of Law.

The value of a gift of a fully paid life insurance policy should be based upon the price that any person of the same age, sex, and condition of health as the insured would have to pay for a similar policy in the same insurance company on the date the gift was made.

The value of each of the insurance policies upon the date of the assignment is found to have been \$42,856.50.

Where a gift is made in trust the donee of the gift, for the purpose of determining the number of exclusions of \$5,000 allowable under Section 504(b) of the Revenue Act of 1932, is the beneficiaries rather than the trust.

Plaintiff is entitled to judgment against defendant for \$2,566.93 together with interest.

Enter Philip L. Sullivan,
Judge.

90 And afterwards, to wit, on the 29th day of June, A. D. 1939, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge appears the following entry, to wit: Judgment—

Entered
in 22,
1936.

91 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—47078) • •

JUDGMENT.

This cause having come on for trial before the Court without a jury and the Court having entered findings of fact and conclusions of law and having filed its opinion herein and being fully advised in the premises,

It Is Hereby Ordered And Adjudged that the Plaintiff Mary M. Ryerson have judgment in her favor against the Defendant United States of America in the sum of \$2,566.93 plus interest upon the following amounts;

From September 16, 1935		
on overpayment for 1934 of	\$276.95	
on interest paid on said		
overpayment of	7.82	\$284.77
From March 5, 1936		
on overpayment for 1935	\$415.42	415.42
From November 11, 1936		
on deficiency payment for		
1934 of	\$819.44	
on interest paid on said		
overpayment of	76.24	
on deficiency payment for		
1935 of	940.00	
on interest paid on such		
payment of	31.06	1,866.74
		<hr/>
		2,566.93

92 at 6% per annum in accordance with section 808 of the Revenue Act of 1936.

Philip L. Sullivan,
United States District Judge.

93 And on, to wit, the 29th day of September, 1939, came the Plaintiff by her attorneys and filed in the Clerk's office of said Court her certain Notice of Appeal in words and figures following, to wit: Filed
Sept
1939

94 IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

Mary M. Ryerson, <i>Plaintiff,</i>	}	At Law No. 47078.
<i>vs.</i>		
United States of America, <i>Defendant.</i>		

NOTICE OF APPEAL.

Notice is hereby given that Mary M. Ryerson, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from the final judgment entered in this action on June 29, 1939 in so far as said judgment does not award to said plaintiff the full sum of \$3,764.24, plus interest, prayed for in the complaint.

Bell, Boyd & Marshall,
Wm. N. Haddad,
Attorneys for Appellant,
Mary M. Ryerson.

Dated at Chicago, Illinois this 29th day of September, 1939.

Filed
 29,
 1939.

95 And on, to wit, the 29th day of September, 1939, came the Plaintiff-Appellant by her attorneys and filed in the Clerk's office of said Court her certain BOND ON APPEAL in words and figures following, to wit:

96 Know All Men by These Presents:

That we, Mary M. Ryerson, as principal, and The Fidelity and Casualty Company of New York, as surety, are held and firmly bound unto United States of America in the sum of Two Hundred and Fifty Dollars (\$250.00) to be paid to the said United States of America, its attorneys, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29th day of September, 1939.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court, between Mary M. Ryerson, plaintiff, and United States of America, defendant, a final judgment was rendered, and the said plaintiff has filed with said Court a notice of appeal to the United States Circuit Court of Appeals for the Seventh Circuit, from the said judgment.

Now, therefore, the condition of the above obligation is such, that if the said Mary M. Ryerson shall make payment of costs if her said appeal is dismissed or the said judgment affirmed, or of such costs as the Appellate Court may award if the judgment is modified, then the above obligation to be void; otherwise to remain in full force and virtue.

Mary M. Ryerson (Seal)
 The Fidelity and Casualty Company of
 New York,

By Frank J. Soukup, (Seal)
 Attorney. (Seal)

Sealed and delivered in presence of:
 H. E. Arthar.

(Jurat here follows, not copied.)

99 And on, to wit, the 9th day of October, 1939, came the Plaintiff-Appellant by her attorneys and filed in the Clerk's office of said Court her certain Statement of Point, etc. in words and figures following, to wit:

File
Oct
1939

100 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47078) * *

STATEMENT OF THE POINT ON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

Appellant, Mary M. Ryerson, hereby states that in her appeal to the Circuit Court of Appeals of the United States for the Seventh Circuit from the final judgment entered in the above entitled cause on June 29, 1939, she intends to rely on the following point:

The District Court erred in concluding:

"The value of a gift of a fully paid life insurance policy should be based upon the price that any person of the same age, sex and condition of health as the insured would have to pay for a similar policy in the same insurance company on the date the gift was made.

"The value of each of the insurance policies upon the date of the assignment is found to be \$42,656.50." and in failing to conclude:

"The value of paid-up insurance policies, when assigned, is, for gift tax purposes, equal to the cash surrender value thereof on the date of their assignment when no greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing upon them, or otherwise, than that value.

"The value of insurance policies numbered 82A-NW-50 and 82B-NW-50 was \$40,696.50 each and the value of 101 insurance policies numbered 110A-NW-50 and 110B-NW-50 was \$40,286 each, on the dates of their respective assignments."

Dated at Chicago, Illinois this 9th day of October, 1939.

Bell, Boyd & Marshall,

Wm. N. Haddad,

Attorneys for Appellant, Mary
M. Ryerson.

Filed
29,
1939.
97 And on, to wit, the 29th day of September, 1939,
came the Defendant by its attorneys and filed in the
Clerk's office of said Court its certain Notice of Appeal
in words and figures following, to wit:

98 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Mary M. Ryerson, Plaintiff,	} At Law. No. 47078.
vs.	
United States of America,	
Defendant.	

NOTICE OF APPEAL.

Notice is hereby given that the United States of America, defendant in the above-named case, hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from so much of the final judgment order entered in the above-entitled cause on June 29, 1939, as finds in favor of the plaintiff herein on a certain issue and directs and awards judgment in favor of the plaintiff and against the defendant, the United States of America, in the sum of \$2566.93, plus interest, which said award is directed pursuant to the conclusion of the Court that where a gift is made in trust the donee of the gift, for the purpose of determining the number of exclusions of \$5,000 allowable under Section 504(b) of the Revenue Act of 1932, is the beneficiaries rather than the trust.

William J. Campbell,
William J. Campbell,

United States Attorney.

David L. Bazelon,
David L. Bazelon,

Assistant United States Attorney.

102 And afterwards, to wit, on the 7th day of November, A. D. 1939, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge appears the following entry, to wit:

103 IN THE DISTRICT COURT OF THE UNITED STATES.
 * * (Caption—47078) * *

ORDER.

On motion of attorneys for plaintiff, It Is Hereby Ordered that the originals of Exhibits 1 and 2 attached to the stipulation of facts herein, consisting of photostatic copies of two insurance policies, be sent by the Clerk of this court to the Circuit Court of Appeals for the Seventh Circuit in lieu of copies thereof.

Enter:

Philip L. Sullivan,
 Judge.

Dated:

104 And on, to wit, the 9th day of October, 1939, came the Plaintiff-Appellant by her attorneys and filed in the Clerk's office of said Court her certain Notice of filing Designation of Portions of Record, etc. in words and figures following, to wit:

105 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—47078) * *

**NOTICE OF FILING APPELLANT'S DESIGNATION
OF THE PORTIONS OF THE RECORD, THE PRO-
CEEDINGS AND EVIDENCE TO BE CONTAINED
IN THE RECORD ON APPEAL, AND STATEMENT
OF THE POINT ON WHICH APPELLANT IN-
TENDS TO RELY ON APPEAL, AND PROOF OF
SERVICE.**

To—William J. Campbell, Esq., United States District
Attorney, United States District Courthouse, Chicago,
Illinois.

You Are Hereby Notified that on October 9, 1939, the
appellant, Mary M. Ryerson, will file with the Clerk of
the District Court of the United States for the Northern
District of Illinois, Eastern Division, appellant's designa-
tion of the portions of the record, the proceedings and
evidence to be contained in the record on appeal, and
statement of the point on which appellant intends to rely
on appeal; and that a true copy of each of said papers is
herewith served upon you.

Bell, Boyd & Marshall,
Wm. N. Haddad,
*Attorneys for appellant, Mary
M. Ryerson.*

I hereby acknowledge receipt on this 9th day of October,
1939, of a copy of the above and foregoing notice, and
a copy of each of the papers therein referred to.

William J. Campbell,
United States District Attorney.

106 And on, to wit, the 9th day of October, 1939, came
the Plaintiff-Appellant by her attorneys and filed in
the Clerk's office of said Court her certain Designation of
Portions of the Record, etc. in words and figures follow-
ing, to wit:

107 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47078) * *

Filed
Oct.
1939.

**APPELLANT'S DESIGNATION OF THE PORTIONS
OF THE RECORD, PROCEEDINGS AND EVIDENCE
TO BE CONTAINED IN THE RECORD ON
APPEAL.**

To the Clerk of the United States District Court for the
Northern District of Illinois, Eastern Division:

Mary M. Ryerson, pursuant to notice of appeal filed by
her in the above entitled cause on September 29, 1939 and
pursuant to the Federal Rules of Civil Procedure, hereby
designates the following as the portions of the record,
proceedings and evidence in the above entitled cause to
be contained in the record on said appeal:

Date of Filing Description of Papers

1938

1. April 12 Complaint.
2. April 18 Affidavit of Service.
3. July 11 Answer.

1939

4. January 5 Stipulation of Facts.
5. March 31 Opinion.
6. June 29 Supplemental Opinion.
7. June 29 Findings of Fact and Conclusions of Law.
8. June 29 Direction for the entry of Judgment.
9. June 29 Judgment.

Dated at Chicago, Illinois, this 9th day of October, 1939.

Bell, Boyd & Marshall,

Wm. N. Haddad,

*Attorneys for Appellant, Mary
M. Ryerson.*

108 And on, to wit, the 13th day of October, 1939, came
the Defendant-Appellee by its attorneys and filed in
the Clerk's office of said Court its certain Designation of
Contents of Record on Appeal in words and figures follow-
ing, to wit:

84 *Defendant-Appellee's Designation of Record.*

Filed 109 IN THE DISTRICT COURT OF THE UNITED STATES.
1939. * * (Caption—47078) * *

APPELLEE'S DESIGNATION OF CONTENTS OF
RECORD ON APPEAL.

To the Clerk of the United States District Court for the
Northern District of Illinois, Eastern Division:

Comes now the United States of America, defendant in
the above-entitled cause, by William J. Campbell, United
States Attorney for the Northern District of Illinois, and
designates that the complete record and all proceedings
and evidence in the District Court in the above-entitled
case be included in and contained in the record on appeal.

Dated at Chicago, Illinois, this day of October,
A. D. 1939.

William J. Campbell,
William J. Campbell,
United States Attorney.

~~Received a copy of the above and foregoing Designation~~
of Contents of Record on Appeal, this 13th day of October,
1939.

Bell, Boyd & Marshall,
Bell, Boyd and Marshall,
Attorneys for Plaintiff.

110 Northern District of Illinois, } ss:
Eastern Division.

I, Hoyt King, Clerk of the District Court of the United
States for the Northern District of Illinois, do hereby
certify the above and foregoing to be a true and complete
transcript of the proceedings had of record made in ac-
cordance with Praeceptum filed in this Court in the cause
entitled Mary M. Ryerson *vs.* United States of America,
No. 47078, as the same appear from the original records
and files thereof now remaining in my custody and con-
trol.

In Testimony Whereof, I have hereunto set my hand
and affixed the seal of said Court at my office, in the City
of Chicago, in said District, this Eighth day of November,
A. D. 1939.

(Seal)

Hoyt King,
Clerk.

Stipulation.

85

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
Seventh Circuit.

Filed
Nov.
1939.

Mary M. Ryerson
vs.
United States of America. } Nos. 7133-7134.

STIPULATION.

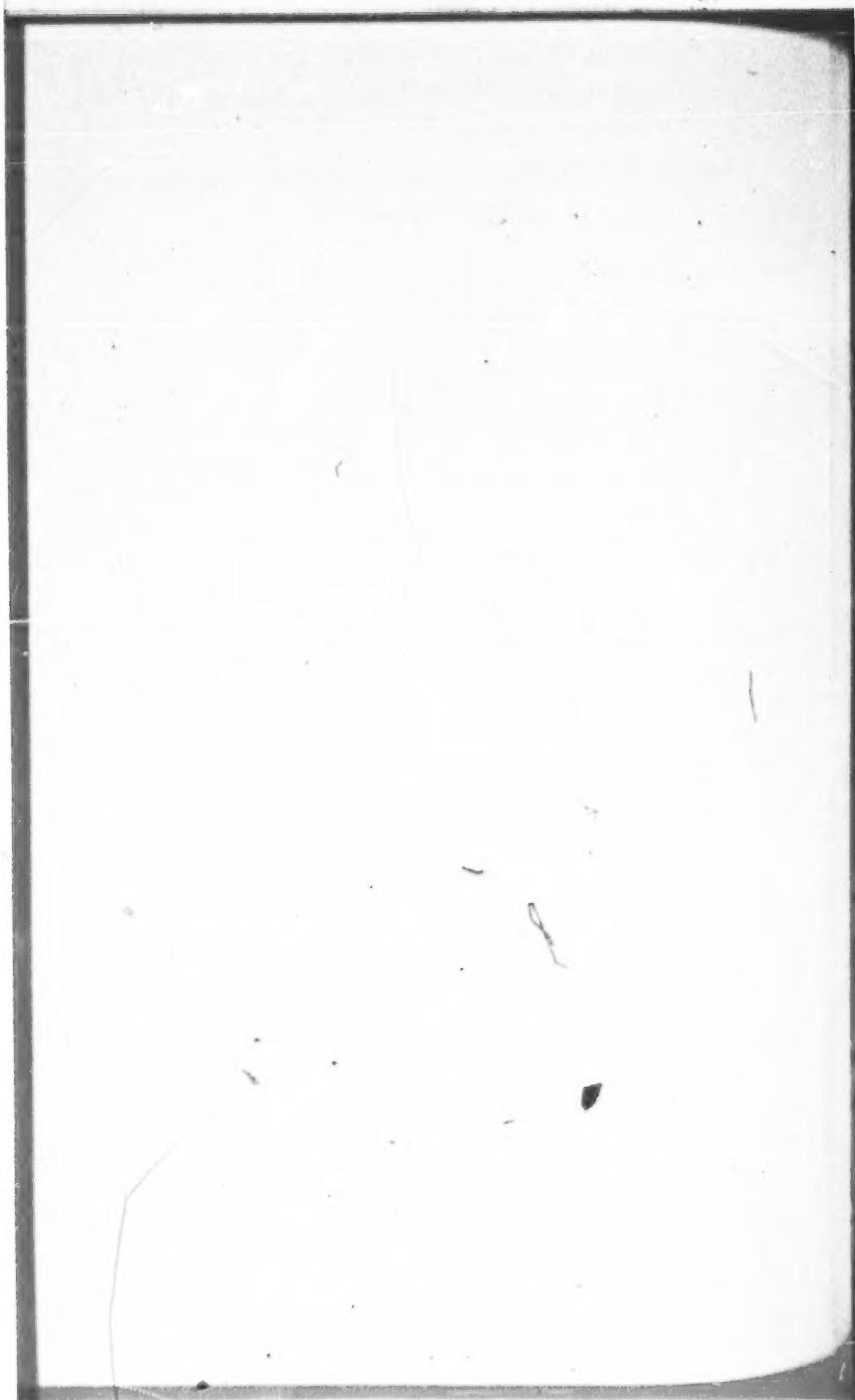
It is hereby stipulated between the parties hereto, by their respective attorneys, that the Clerk shall apportion equally between the parties the cost of printing the record in their respective appeals.

William J. Campbell,
Attorney for Defendant.

Wm. N. Haddad,
Attorney for Plaintiff.

Dated: November 13, 1939.

Endorsed: In the United States Circuit Court of Appeals.
• • • (Caption—7133-4) • • • Stipulation. U. S.
C. C. A. 7. Filed Nov. 15, 1939, Frederick G. Campbell,
Clerk.



And afterwards, to wit, on the 20th day of December, 1939, the following further proceedings were had and entered of record:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Wednesday, December 20, 1939.

Before Hon. Walter E. Treanor, Circuit Judge.

(Caption No. 7133)

Now this day come Joseph T. Ryerson and Edward L. Ryerson, Jr., by their counsel and suggest the death of Mary M. Ryerson, plaintiff-appellee in this cause, and move for their substitution as parties appellees.

On consideration whereof, it is now here ordered that Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, be substituted as parties appellees in this cause in the place and stead of Mary M. Ryerson, Deceased.

And on the same day, to wit, on the 20th day of December, 1939, the following further proceedings were had and entered of record:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

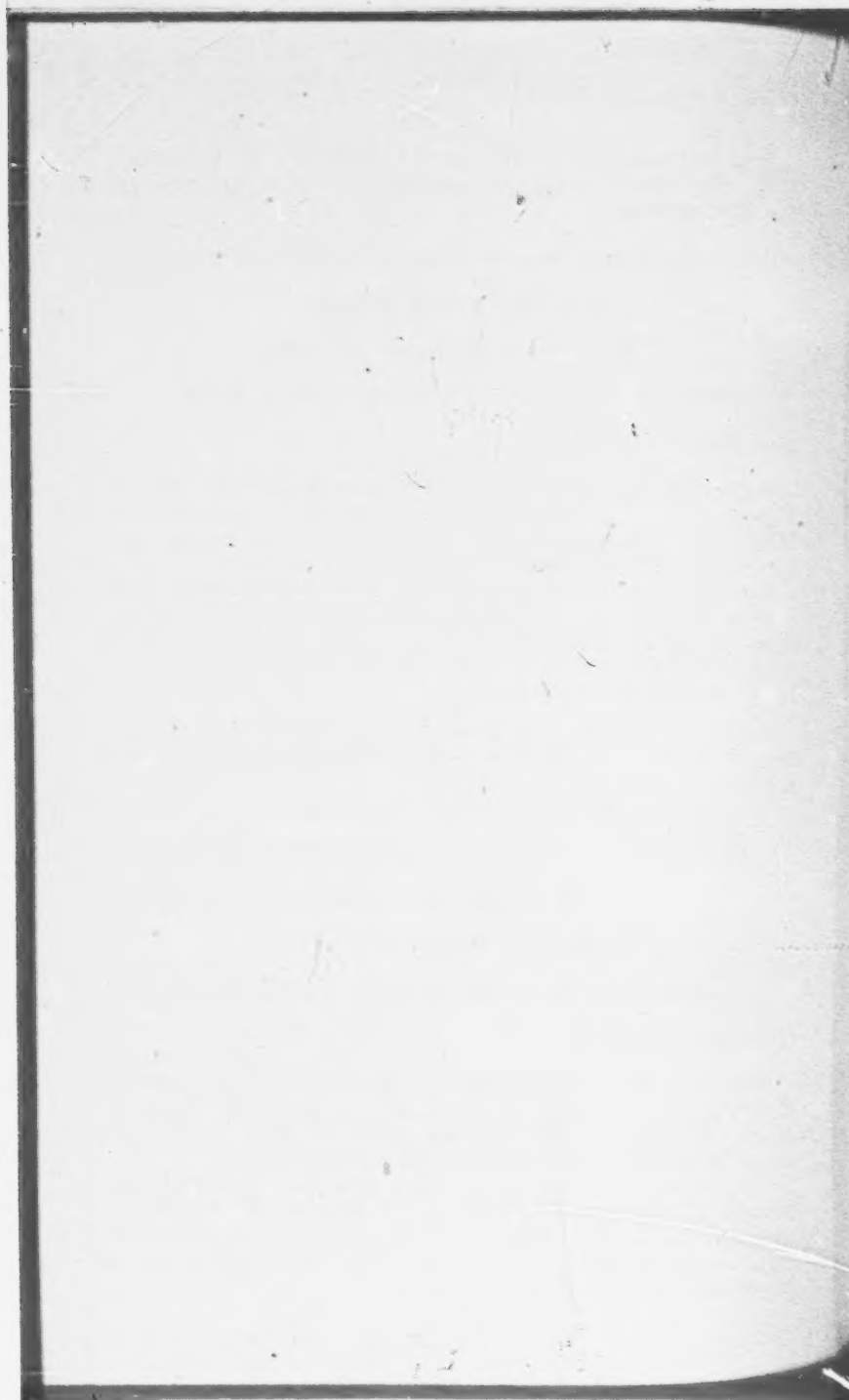
Wednesday, December 20, 1939.

Before Hon. Walter E. Treanor, Circuit Judge.

(Caption No. 7134)

Now this day come Joseph T. Ryerson and Edward L. Ryerson, Jr., by their counsel and suggest the death of Mary M. Ryerson, plaintiff-appellant in this cause, and move for their substitution as parties appellants.

On consideration whereof, it is now here ordered that Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, be substituted as parties appellants in this cause in the place and stead of Mary M. Ryerson, Deceased.



**UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SEVENTH CIRCUIT**

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the twenty-seventh day of December 1939 in the following entitled causes: 7133, Joseph T. Ryerson and Edward L. Ryerson, etc., plaintiffs-appellees, vs. United States of America, defendant-appellant; 7134, Joseph T. Ryerson and Edward L. Ryerson, etc., plaintiffs-appellants, vs. United States of America, defendant-appellee; as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this thirteenth day of September A. D. 1940.

[SEAL]

KENNETH J. CARRICK,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

7133

MARY M. RYERSON, PLAINTIFF-APPELLEE

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

7134

MARY M. RYERSON, PLAINTIFF-APPELLANT

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

And to-wit: On the twentieth day of December, 1939, the following proceedings were had and entered of record, to-wit:

Wednesday, December 20, 1939

Court met pursuant to adjournment

Before: Hon. WALTER E. TREANOR, Circuit Judge.

7133

MARY M. RYERSON, PLAINTIFF-APPELLEE

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Now this day come Joseph T. Ryerson and Edward L. Ryerson, Jr., by their counsel and suggest the death of Mary M. Ryerson, plaintiff-appellee in this cause, and move for their substitution as parties appellees.

On consideration whereof, it is now here ordered that Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, be substituted as parties appellees in this cause in the place and stead of Mary M. Ryerson, Deceased.

7134

MARY M. RYERSON, PLAINTIFF-APPELLANT

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Now this day come Joseph T. Ryerson and Edward L. Ryerson, Jr., by their counsel and suggest the death of Mary M. Ryerson, plaintiff-appellant in this cause, and move for their substitution as parties appellants.

On consideration whereof, it is now here ordered that Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, be substituted as parties appellants in this cause in the place and stead of Mary M. Ryerson, Deceased.

And afterwards, to-wit: On the ninth day of July, 1940, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7133 and 7134. October Term, 1939, April Session, 1940

THE UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

vs.

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS
OF THE ESTATE OF MARY M. RYERSON, PLAINTIFFS-APPELLEES

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS
OF THE ESTATE OF MARY M. RYERSON, PLAINTIFFS-APPELLANTS

vs.

THE UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeals from the District Court of the United States for the
Northern District of Illinois, Eastern Division

July 9, 1940

Before TREANOR and KERNER, Circuit Judges, and LINDLEY,
District Judge.

TREANOR, Circuit Judge: This action was brought in the District Court under the Tucker Act¹ to recover gift taxes for the years 1934 and 1935. The taxes were assessed by the Commissioner of Internal Revenue and have been paid by the taxpayer. Recovery is sought on the ground that the taxes were wrongfully exacted.

Two questions are presented on appeal. One question is whether in case of a gift under a trust agreement only one exclusion of \$5,000 is allowed for the trust as the donee or whether an exclusion is allowed for each of the beneficiaries as a donee; and the second question involves the measure of value of four fully paid life-insurance policies, the assignments of which constituted the gifts in question.

The facts are not in dispute and will be indicated sufficiently in the course of our discussion.

In respect to the method of determining the value of a gift of a fully paid life-insurance policy the District Court stated

¹ U. S. C. A., title 28, Sec. 41 (20).

as a conclusion of law that the value "should be based upon the price that any person of the same age, sex, and condition of health as the insured would have to pay for a similar policy in the same insurance company on the date the gift was made."

The plaintiffs⁴ contend that the District Court was in error in stating such conclusion of law and it is their contention that the proper measure of value of a paid up life insurance policy is the cash surrender value.

The only statutory provision which is relevant reads as follows: "If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift."⁵ The foregoing provision is so general in its terms as to require some interpretative regulation. The act was passed in 1932 and in 1933 the following treasury regulation was adopted: "The irrevocable assignment of a life insurance policy * * * constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift." In 1936 a new regulation was issued which accords with the ruling of the district court and the contention of the United States.

In *Helvering v. Winmill*⁶ the Supreme Court stated the generally recognized rule that "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law." In *Helvering v. Cronin*⁷ the Circuit Court of Appeals for the Eighth Circuit discussed the 1933 regulation, and the following pertinent excerpt is from its opinion:

"If the gift tax is to be computed by the original regulation of 1933, the taxpayer's return was correct; if by the regulation of 1936, the Commissioner is right. If the regulation of 1933 were invalid because inconsistent with the statute, the 1936 regulation would be applicable * * *. It is not claimed, however, that the 1933 regulation is invalid. It had the approval of Congress by the reenactment without material change of section 506 of the Revenue Act of 1932 in the Revenue Acts of 1934 and 1935. That regulation, therefore, had the effect of law * * *. Since it was in effect on the date of the gift it rules the determination of the value of the policies. The 1936 regulation can not be given retroactive effect. * * *"

The Courts of Appeals in the Third, Fourth, and Fifth Circuits are in accord with the reasoning and holding of the Eighth Circuit in *Helvering v. Cronin*.

⁴ The suit was instituted by the taxpayer who died during the pendency of the appeals. Her executors were substituted as parties by order of this Court.

⁵ See 504 Revenue Act of 1932; U. S. C. A. Title 26, Sec. 555; 47 Stat. 169, 249.

⁶ 305 U. S. 79.

⁷ 106 Fed. 2nd 907, 909.

When the Commissioner, with the approval of the Secretary, promulgates an administrative regulation which the Commissioner is authorized by the Revenue Act to promulgate, such regulation, by force of the Act of Congress, has the effect of law. In the Gift Tax Act, Congress does not designate the factors which shall be taken into consideration in determining the amount of a gift. Congress merely provides that if the gift is made in property, the value thereof shall be considered the amount of the gift. There is no fixed, general rule of law which determines value of property. The factors entering into the concept of value vary with types of property and with the purpose for, or use to be made of, the valuation. Likewise, the relative weight to be attached to the different factors may vary. In view of the very general and indefinite standard fixed by Congress for the determination of the amount of the gift of property it became a practical necessity for the Commissioner to designate some factual test of value which could be used to fix the amount of the gift in terms of money. If the test, or measure of value, which was adopted by the Commissioner in 1933 fell within the standard fixed by the Act, and if it afforded a reasonably accurate measure of the monetary value of the gift, the regulation embodying such test or measure was authorized by Congress and had the force of law. The fact that some other test or measure might have been reasonable, or the fact that the regulation embodying the first measure might later be modified and still represent a valid exercise of power by the Commissioner, does not in any way vitiate the validity and the binding force of the first regulation during the period that it was officially recognized and enforced.

We are not concerned with a regulation which embodies an erroneous construction of an Act of Congress and which, therefore, would be invalid. In such a case a substituted regulation embodying the correct construction would not represent a change in the law but would constitute a correct expression of the law. Nor do we have an example of an administrative construction by administrative practice, in which case, if the construction is reasonable, courts will give great weight to the practical construction as evidencing the legislative intent.

The United States Government urges that "The cash surrender value of the policies is not their fair market value for gift tax purposes"; and states that the fair market value of the fully paid life insurance policies is not the surrender value but the amount which would have to be paid to duplicate the policies on the date of the gift. But the cost of duplication is not understood generally to measure the "fair market value" of property. The cost of duplication affords some evidence of what a "willing buyer"

would pay and may be considered along with other evidence; but it is not the measure of the fair market value of property.

We are of the opinion that, for purposes of evaluating a fully paid life insurance policy, the common test of "the fair market price or value" has no significance. In view of the peculiar type of property involved, the problem for the Commissioner was to devise a fair and appropriate measure of value which reasonably could be considered the amount of the gift. We are of the opinion that the cash surrender value constitutes a fair measure of the value of a fully paid life insurance policy for gift tax purposes. The parties stipulated that "no greater amount could have been obtained or realized upon the said policies by surrendering them or borrowing on them, or otherwise, than these cash values." The District Court found the foregoing to be a fact. If "fair market price" has any significance for the present question it would seem that the cash surrender value more nearly conforms to the fair market value test than does the cost of duplication. Such was the thought expressed by the Board of Tax Appeals in *Hains v. Commissioner*.¹

"The fact that insurance companies assume risks and make a charge for doing so which reduces the salable value of the contract from the moment of its issue is of no importance. The true test of value is what such contracts can be sold for, not what it will cost to turn around and buy another one from the insurance company which chooses to make a service charge for issuing another."

The United States urges that even if the regulation of 1933 be applied, consideration has not been given to that part of the regulation which requires that there be added to the net cash surrender "the prepaid insurance adjusted to the date of the gift." We think it is apparent that the requirement of "prepaid insurance" applies to policies upon which current premiums are still being paid. In the case of a fully paid insurance policy the cash surrender value reflects the increased value of the policy due to the fact that the insurance is fully paid up.

The United States also argues that the cash value is only the liquidation value of the investment of the policy, and does not include the value of its protection feature. But "the protection in the face amount of the policy payable at * * * the insured's * * * death" represents merely future accretion to the present surrender value of the policy which the assignee will receive if he retains, until the death of the insured, the ownership of what may be designated with reasonable accuracy the invested present surrender value. Making due allowances for costs of

¹ 37 F. T. A. 1013, affirmed in 104 Fed. 2nd 854.

administration which are properly allocable to an insurance policy, the cash surrender value at any particular time is approximately the present worth of the face of the policy as of the "expectancy" date of the death of the insured. Actually, in any given case, there may be considerable variation from the average life expectancy which is taken as the basis of computation. That, however, is a possibility which cannot be considered in fixing the value of an insurance policy during the lifetime of the insured. In short, in computing values of contracts of insurance we cannot ignore the basic data upon which all such contracts are predicated and which enter into all determinations of values which are fixed by the contract.

We conclude that the 1933 regulation established a fair measure of the value of the gift property, consisting of fully paid-up insurance policies; that under the Revenue Act the Commissioner possessed the authority to make such regulation and that such regulation had the force of law during the taxable years in question and controlled the determination of the amount of the gifts.

Section 504 (b) provides that in the case of gifts made to any person by the donor during the calendar year "the first \$5,000 of such gifts to such person shall not * * * be included in the total amount of gifts made during such year." In the instant case the insurance policies were assigned to trustees for the benefit of more than one beneficiary under each trust and the precise question for consideration is whether there shall be one exclusion for each trust, on the theory that the gift is made to the trustee as donee, or whether there shall be an exclusion of the "first \$5,000" for each of the beneficiaries under the trust. The District Court stated as its conclusion of law that "Where a gift is made in trust the donee of the gift, for the purpose of determining the number of exclusions of \$5,000 allowable under Section 504 (b) of the Revenue Act of 1932, is the beneficiaries rather than the trust." The defendant, United States of America, contends that the District Court was in error in so holding.

The United States urges that its position is sustained by the decision of this Court in *Commissioner v. Wells*.¹ In that case the taxpayer had created a trust for the benefit of each of his three children. Each of the trust instruments directed the trustee to collect the income from the trust corpus and to accumulate the net income until the child named therein should attain the age of twenty-one years, or until death if the child should die before that time. Upon reaching the age of twenty-one years each child was to receive the trust income until he reached the age of thirty, or until the death of his mother, who was trustee,

¹ 88 Fed. 2nd 339.

whichever event occurred first, and then each child was to receive the corpus. In his tax return the taxpayer reported the gifts and deducted therefrom \$5,000 from each trust. The Commissioner disallowed the deduction of the \$5,000 for each on the ground that the gifts were of future interests, in respect to which no exclusion or deduction is allowed. Upon taxpayer's petition for a redetermination, the Board of Tax Appeals held that the gifts were not of future interests and that there was no deficiency. This Court affirmed the decision of the Board.

In reaching its decision in the foregoing case this Court called attention to the statutory provision that "the term 'person' means an individual, a trust or estate, a partnership or a corporation"; and the Court concluded that each of the three trusts was a person capable of accepting the gifts in question as a donee. Perhaps the statement in the opinion of this Court which is most significant for our present purposes is quoted by the United States in its brief:

"Under the undisputed evidence all the elements of a consummated gift were present. With respect to the donor the transfer was not in futuro. He thereby divested himself of all vestige of title, and no future act on his part could modify or abrogate his act. Likewise, the donees were competent to accept the gifts, and they did so immediately. True, they were trusts, but they were no different from persons, for the Act so states. They took immediate title to and possession of all the property from the donor; they put it to instant use for the directed purpose of building up an estate for the ultimate and contingent beneficiaries, who were named specifically. The fact that those beneficiaries did not come into possession of the corpus until some time in the future, dependent upon some contingency, does not make the donor's act any the less a completed transfer to the trustees. The fact must not be overlooked that the Act involved relates to transfers and not receipts."

By the terms of Section 504 (b) it is recognized that there may be a gift of future interests in property, as well as a gift of present interest. There must be both a donor and a donee in order to have a completed gift, although as suggested in the Wells case, it is the transfer of property which is taxed and not the receipt. But there is no gift in the absence of an identifiable donee who receives the property. In the Wells case this Court was confronted with the contention by the United States that because of postponement of enjoyment by the beneficiaries, the gifts were gifts of future interests in property and that, as a consequence, the \$5,000 exclusion provided for by the Gift Tax Act for gifts, other than gifts of future interests, was not available. This Court expressed some doubt about the meaning of the regu-

lations which defined future interests, but that question became immaterial since, in the opinion of the Court, the donees were the trusts.

Plaintiffs suggest that in the Wells case "with an equal number of beneficiaries and trusts, the question was of no consequence." And the plaintiffs add that "in the case of one trust for several beneficiaries, or several trusts for one beneficiary, the distinction is vital." It is true that in the Wells case the decision of this Court did not directly decide whether the number of exemptions would be limited to one for each trust or would be determined by the number of individual beneficiaries of each trust. But the conclusion of this Court, and its holding, that an exclusion of \$5,000 was permissible under the facts of the case, rested upon the preliminary holding that each trust was a person and, as such person, was the donee of a gift of a present interest in property which had been transferred to it. We cannot ignore the plain implications of the statements of this Court in the Wells case to the effect that in "respect to the donor the transfer was not in futuro"; that "the donees were competent to accept the gifts, and they did so immediately"; that "they (donees) were trusts, but they were no different from persons, for the Act so states"; that "the fact that those beneficiaries did not come into possession of the corpus until some time in the future, dependent upon some contingency, does not make the donor's act any the less a completed transfer to the trustees."

We conclude that for purposes of Section 504 (b) each trust in the instant case was the person to whom the gift was made and that in respect to each gift to the trust only one exclusion of \$5,000 is permissible, regardless of the number of beneficiaries of the trust.

In our opinion the District Court erred both in holding that the value of the gift of the fully paid life insurance policy should be based upon the cost of the duplication of the policy at the time of the gift, and in holding that "where a gift is made in trust, the donee of the gift, for the purpose of determining the number of exclusions of \$5,000 allowed under Section 504 (b) of the Revenue Act of 1932, is the beneficiary rather than the trust."

Since there is no dispute about the facts, the judgment of the District Court is reversed and the cause remanded with directions to the District Court to restate its conclusions of law as required by his opinion and to enter judgment in conformity therewith. Judgment reversed.

LINDLEY, District Judge, dissenting in part: I am of the opinion that the District Court was correct in its conclusion that where a gift is made in trust, for the purpose of determining the number of exemptions allowable under the gift tax law, the donee is

the beneficiary rather than the trust. It seems to me that any other construction does violence to the congressional intent and promotes evasion of taxes. If the trust and not the beneficiary is the donee, then a donor may, by creating ten separate trusts, that is, creating ten trusts in ten separate persons as trustees and by designating the same beneficiary in each trust, give \$50,000 to one donee without payment of any gift tax. This result, I think, is not within the express purport or implication of the legislation. Rather the Congress meant to prevent tax-free donations in excess of \$5,000 in any recipient.

A true Copy:

Teste:

*Clerk of the United States Circuit Court of
 Appeals for the Seventh Circuit.*

And on the same day, to-wit: On the ninth day of July 1940 the following further proceedings were had and entered of record, to-wit:

Tuesday, July 9, 1940

Court met pursuant to adjournment

Before: HON. WALTER E. TREANOR, Circuit Judge; HON. OTTO KERNER, Circuit Judge; HON. WALTER C. LINDLEY, District Judge.

7133

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS
 OF THE ESTATE OF MARY M. RYERSON, PLAINTIFFS-APPELLEES

vs.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the
 Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said District Court with

directions to restate its conclusions of law as required by the opinion of this Court and to enter judgment in conformity therewith.

7134

JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR., AS EXECUTORS
OF THE ESTATE OF MARY M. RYERSON, PLAINTIFFS-APPELLANT

VS.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeal from the District Court of the United States for the
Northern District of Illinois Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said District Court with directions to restate its conclusions of law as required by the opinion of this Court and to enter judgment in conformity therewith.

United States Circuit Court of Appeals for the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of proceedings had and papers filed (excepting briefs of counsel, motion relative to substitution of parties, stipulation relative to costs of printing record, stipulation and order relative to consolidation of causes, appearances of counsel, stipulation and motion and orders relative to time for filing petition for rehearing and order taking cause under advisement) in the following entitled causes: 7133, Joseph T. Ryerson and Edward L. Ryerson, etc., plaintiffs-appellees, vs. United States of America, defendant-appellant; 7134, Joseph T. Ryerson and Edward L. Ryerson, etc., plaintiffs-appellants, vs. United States of America, defendant-appellee; as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the

Seventh Circuit, at the City of Chicago, this thirteenth day of September A. D. 1940.

[SEAL]

KENNETH J. CARRICK,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

Supreme Court of the United States

No. 494, October Term, 1940

Order allowing certiorari

Filed November 12, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 496.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 495, October Term, 1940

Order allowing certiorari

Filed November 12, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 494.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

7

5